

By: Representatives Flaggs, Guice

To: Banking and Financial  
ServicesHOUSE BILL NO. 781  
(As Sent to Governor)

1 AN ACT TO ENACT THE MISSISSIPPI SECURITIES ACT OF 2009 TO BE  
2 CODIFIED IN TITLE 75, CHAPTER 71, MISSISSIPPI CODE OF 1972; TO  
3 PROVIDE FOR A SHORT TITLE; TO PROVIDE FOR DEFINITIONS; TO PROVIDE  
4 FOR ELECTRONIC RECORDS AND SIGNATURES; TO PROVIDE FOR EXEMPTIONS  
5 FROM REGISTRATION OF SECURITIES; TO PROVIDE FOR REGISTRATION OF  
6 SECURITIES AND NOTICE OF FILING OF FEDERAL COVERED SECURITIES; TO  
7 PROVIDE FOR DENIAL, SUSPENSION, OR REVOCATION OF SECURITIES  
8 REGISTRATION; TO PROVIDE FOR REGISTRATION OF BROKER-DEALERS,  
9 AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES,  
10 AND FEDERAL COVERED INVESTMENT ADVISERS; TO PROVIDE FOR  
11 TERMINATION OR TRANSFER OF EMPLOYMENT OF INVESTMENT ADVISERS; TO  
12 PROVIDE FOR SUCCESSION, CHANGE, OR WITHDRAWAL OF REGISTRATION; TO  
13 PROVIDE FOR FILING FEES AND POSTREGISTRATION REQUIREMENTS; TO  
14 PROVIDE FOR FRAUD AND LIABILITIES; TO PROVIDE FOR PROHIBITED  
15 CONDUCT IN PROVIDING INVESTMENT ADVICE; TO PROVIDE FOR FILING OF  
16 SALES AND ADVERTISING LITERATURE; TO PROVIDE FOR QUALIFIED  
17 IMMUNITY AND CIVIL AND CRIMINAL PENALTIES; TO PROVIDE FOR  
18 RESCISSION OFFERS; TO PROVIDE FOR ADMINISTRATIVE AND JUDICIAL  
19 REVIEW; TO PROVIDE FOR INVESTIGATIONS AND SUBPOENAS; TO PROVIDE  
20 FOR UNIFORMITY AND COOPERATION WITH OTHER AGENCIES; TO PROVIDE FOR  
21 JURISDICTION AND SERVICE OF PROCESS; TO PROVIDE APPLICABILITY; TO  
22 MAKE TRANSITION PROVISIONS; TO REPEAL SECTIONS 75-71-101 THROUGH  
23 75-71-735, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTES THE  
24 MISSISSIPPI SECURITIES ACT; AND FOR RELATED PURPOSES.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 **SECTION 1.** The following shall be codified as Chapter 71 of  
27 Title 75, Mississippi Code of 1972, to replace the Mississippi  
28 Securities Act repealed in Section 2 of this act:

29 **ARTICLE 1 - GENERAL PROVISIONS.**

30 **Section 75-71-101. Short title.** This chapter may be cited  
31 as the Mississippi Securities Act of 2010.

32 **Section 75-71-102. Definitions.** In this chapter, unless the  
33 context otherwise requires:

34 (1) "Administrator" means the Secretary of State.

35 (2) "Agent" means an individual, other than a  
36 broker-dealer, who represents a broker-dealer in effecting or



attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. The term does not include an individual excluded by rule adopted or order issued under this chapter. The term does not include an associated person of an issuer who is deemed not to be a broker under Securities and Exchange Commission Rule 3a4-1.

(3) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 USC Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B) or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsection 3(a)(4)(B)(i) through (vi), (viii) through (x), and



(xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4));

(D) An international banking institution; or

(E) A person excluded by rule adopted or order issued under this chapter.

(5) "Depository institution" means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A Morris Plan bank; or

(iii) An industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 USC 1813(c)(2), or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 USC Section 77r(b)) or rules or regulations adopted pursuant to that provision.



(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;

(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of Ten Million Dollars (\$10,000,000.00) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income



Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of Ten Million Dollars (\$10,000,000.00), its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 USC Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Ten Million Dollars (\$10,000,000);

(J) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 USC Section 681(c)) with total assets in excess of Ten Million Dollars (\$10,000,000.00);

(K) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(22)) with total assets in excess of Ten Million Dollars (\$10,000,000.00);

(L) A federal covered investment adviser acting for its own account;

(M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);



(N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) Any other person, other than an individual, of institutional character with total assets in excess of Ten Million Dollars (\$10,000,000.00) not organized for the specific purpose of evading this chapter; or

(P) Any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;



(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) A federal covered investment adviser;

(F) A bank or savings institution;

(G) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) Any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;



(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a) and is:

(i) An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a); or

(ii) Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(25)); or

(D) Is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a





265 lease, right, or royalty, whether whole or fractional, that  
266 creates fractional interests for the purpose of sale.

267 (18) "Nonissuer transaction" or "nonissuer  
268 distribution" means a transaction or distribution not directly or  
269 indirectly for the benefit of the issuer.

270 (19) "Offer to purchase" includes an attempt or offer  
271 to obtain, or solicitation of an offer to sell, a security or  
272 interest in a security for value. The term does not include a  
273 tender offer that is subject to Section 14(d) of the Securities  
274 Exchange Act of 1934 (15 USC 78n(d)).

275 (20) "Person" means an individual; corporation;  
276 business trust; estate; trust; partnership; limited liability  
277 company; association or organization, whether incorporated or  
278 unincorporated; joint venture; government; governmental  
279 subdivision, agency, or instrumentality; or any other legal or  
280 commercial entity.

281 (21) "Place of business" of a broker-dealer, an  
282 investment adviser, or a federal covered investment adviser means:

283 (A) An office at which the broker-dealer,  
284 investment adviser, or federal covered investment adviser  
285 regularly provides brokerage or investment advice or solicits,  
286 meets with, or otherwise communicates with customers or clients;  
287 or

288 (B) Any other location that is held out to the  
289 general public as a location at which the broker-dealer,  
290 investment adviser, or federal covered investment adviser provides  
291 brokerage or investment advice or solicits, meets with, or  
292 otherwise communicates with customers or clients.

293 (22) "Predecessor act" means the act repealed by  
294 Section 75-71-702.

295 (23) "Price amendment" means the amendment to a  
296 registration statement filed under the Securities Act of 1933 or,  
297 if an amendment is not filed, the prospectus or prospectus



298 supplement filed under the Securities Act of 1933 that includes a  
299 statement of the offering price, underwriting and selling  
300 discounts or commissions, amount of proceeds, conversion rates,  
301 call prices, and other matters dependent upon the offering price.

302 (24) "Principal place of business" of a broker-dealer  
303 or an investment adviser means the executive office of the  
304 broker-dealer or investment adviser from which the officers,  
305 partners, or managers of the broker-dealer or investment adviser  
306 direct, control, and coordinate the activities of the  
307 broker-dealer or investment adviser.

308 (25) "Record," except in the phrases "of record,"  
309 "official record," and "public record," means information that is  
310 inscribed on a tangible medium or that is stored in an electronic  
311 or other medium and is retrievable in perceivable form.

312 (26) "Sale" includes every contract of sale, contract  
313 to sell, or disposition of, a security or interest in a security  
314 for value, and "offer to sell" includes every attempt or offer to  
315 dispose of, or solicitation of an offer to purchase, a security or  
316 interest in a security for value. Both terms include:

317 (A) A security given or delivered with, or as a  
318 bonus on account of, a purchase of securities or any other thing  
319 constituting part of the subject of the purchase and having been  
320 offered and sold for value;

321 (B) A gift of assessable stock involving an offer  
322 and sale; and

323 (C) A sale or offer of a warrant or right to  
324 purchase or subscribe to another security of the same or another  
325 issuer and a sale or offer of a security that gives the holder a  
326 present or future right or privilege to convert the security into  
327 another security of the same or another issuer, including an offer  
328 of the other security.

329 (27) "Securities and Exchange Commission" means the  
330 United States Securities and Exchange Commission.



(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term includes both a certificated and an uncertificated security. The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or other specified period; or an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974. An "investment contract" includes, among other contracts, an investment in a limited partnership, an interest in a limited liability company, an investment in a viatical settlement or similar agreement, and an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act



of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**Section 75-71-103. References to federal statutes.**

"Securities Act of 1933" (15 USC Section 77a et seq.), "Securities Exchange Act of 1934" (15 USC Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 USC Section 79 et seq.), "Investment Company Act of 1940" (15 USC Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 USC Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 USC Section 1001 et seq.), "National Housing Act" (12 USC Section 1701 et seq.), "Commodity Exchange Act" (7 USC Section 1 et seq.), "Internal Revenue Code" (26 USC Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 USC Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 USC Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 USC Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on January 1, 2000, or as later amended.



395           **Section 75-71-104. References to federal agencies.** A

396 reference in this chapter to an agency or department of the United  
397 States is also a reference to a successor agency or department.

398           **Section 75-71-105. Electronic records and signatures.** This

399 chapter modifies, limits, and supersedes the federal Electronic  
400 Signatures in Global and National Commerce Act, but does not  
401 modify, limit, or supersede Section 101(c) of that act (15 USC  
402 Section 7001(c)) or authorize electronic delivery of any of the  
403 notices described in Section 103(b) of that act (15 USC Section  
404 7003(b)). This chapter authorizes the filing of records and  
405 signatures, when specified by provisions of this chapter or by a  
406 rule adopted or order issued under this chapter, in a manner  
407 consistent with Section 104(a) of that act (15 USC Section  
408 7004(a)).

409                           **ARTICLE 2**

410                   **EXEMPTIONS FROM REGISTRATION OF SECURITIES.**

411           **Section 75-71-201. Exempt securities.** The following

412 securities are exempt from the requirements of Sections 75-71-301  
413 through 75-71-306 and 75-71-504:

414           (1) A security, including a revenue obligation or a  
415 separate security as defined in Rule 131 (17 CFR 230.131) adopted  
416 under the Securities Act of 1933, issued, insured, or guaranteed  
417 by the United States; a state; a political subdivision of a state;  
418 a public authority, agency, or instrumentality of one or more  
419 states; a political subdivision of one or more states; or a person  
420 controlled or supervised by and acting as an instrumentality of  
421 the United States under authority granted by the Congress; or a  
422 certificate of deposit for any of the foregoing;

423           (2) A security issued, insured, or guaranteed by a  
424 foreign government with which the United States maintains  
425 diplomatic relations, or any of its political subdivisions, if the  
426 security is recognized as a valid obligation by the issuer,  
427 insurer, or guarantor;



428           (3) A security issued by and representing or that will  
429 represent an interest in or a direct obligation of, or be  
430 guaranteed by:

431                   (A) An international banking institution;

432                   (B) A banking institution organized under the laws  
433 of the United States; a member bank of the Federal Reserve System;  
434 or a depository institution a substantial portion of the business  
435 of which consists or will consist of receiving deposits or share  
436 accounts that are insured to the maximum amount authorized by  
437 statute by the Federal Deposit Insurance Corporation, the National  
438 Credit Union Share Insurance Fund, or a successor authorized by  
439 federal law or exercising fiduciary powers that are similar to  
440 those permitted for national banks under the authority of the  
441 Comptroller of Currency pursuant to Section 1 of Public Law 87-722  
442 (12 USC Section 92a); or

443                   (C) Any other depository institution, unless by  
444 rule or order the administrator proceeds under Section 75-71-204;

445           (4) A security issued by and representing an interest  
446 in, or a debt of, or insured or guaranteed by, an insurance  
447 company authorized to do business in this state;

448           (5) A security issued or guaranteed by a railroad,  
449 other common carrier, public utility, or public utility holding  
450 company that is:

451                   (A) Regulated in respect to its rates and charges  
452 by the United States or a state;

453                   (B) Regulated in respect to the issuance or  
454 guarantee of the security by the United States, a state, Canada,  
455 or a Canadian province or territory; or

456                   (C) A public utility holding company registered  
457 under the Public Utility Holding Company Act of 1935 or a  
458 subsidiary of such a registered holding company within the meaning  
459 of that act;



(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 USC Section 78i(b));

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 USC Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to (B)



the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;

(B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 75-71-611, and grounds for denial or suspension of the exemption; or

(C) To register under Section 75-71-304;

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)); and

(10) Any oil, gas or mineral lease, working interest, mineral interest or mineral estate, royalty interest or royalty estate, overriding royalty, or an oil payment or net profit interest, regardless of how said interests may be created, provided any vested estate in any working interest shall not be less than one-two-hundredth (1/200) of the whole working interest,





and any mineral lease and royalty sales made in exchange for labor, material and machinery used in drilling an oil or gas well.

**Section 75-71-202. Exempt transactions.** The following transactions are exempt from the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504. The transactions listed below are self-actuating, are not conditioned by rule and require no pre-approval of the administrator, unless otherwise indicated below:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) The security is sold at a price reasonably related to its current market price;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order



issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) Any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or

(iv) The issuer of the security has total assets of at least Two Million Dollars (\$2,000,000.00) based on an



audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific



623 business plan or purpose or has indicated that its primary  
624 business plan is to engage in a merger or combination of the  
625 business with, or an acquisition of, an unidentified person;

626 (6) A nonissuer transaction by or through a  
627 broker-dealer registered or exempt from registration under this  
628 chapter effecting an unsolicited order or offer to purchase;

629 (7) A nonissuer transaction executed by a bona fide  
630 pledgee without the purpose of evading this chapter;

631 (8) A nonissuer transaction by a federal covered  
632 investment adviser with investments under management in excess of  
633 One Hundred Million Dollars (\$100,000,000.00) acting in the  
634 exercise of discretionary authority in a signed record for the  
635 account of others;

636 (9) The following transaction requires approval of the  
637 administrator: a transaction in a security, whether or not the  
638 security or transaction is otherwise exempt, in exchange for one  
639 or more bona fide outstanding securities, claims, or property  
640 interests, or partly in such exchange and partly for cash, if the  
641 terms and conditions of the issuance and exchange or the delivery  
642 and exchange and the fairness of the terms and conditions have  
643 been approved by the administrator after a hearing;

644 (10) A transaction between the issuer or other person  
645 on whose behalf the offering is made and an underwriter, or among  
646 underwriters;

647 (11) A transaction in a note, bond, debenture, or other  
648 evidence of indebtedness secured by a mortgage or other security  
649 agreement if:

650 (A) The note, bond, debenture, or other evidence  
651 of indebtedness is offered and sold with the mortgage or other  
652 security agreement as a unit;

653 (B) A general solicitation or general  
654 advertisement of the transaction is not made; and



655                   (C) A commission or other remuneration is not paid  
656 or given, directly or indirectly, to a person not registered under  
657 this chapter as a broker-dealer or as an agent;

658                   (12) A transaction by an executor, administrator of an  
659 estate, sheriff, marshal, receiver, trustee in bankruptcy,  
660 guardian, or conservator;

661                   (13) A sale or offer to sell to:

662                               (A) An institutional investor;

663                               (B) A federal covered investment adviser; or

664                               (C) Any other person exempted by rule adopted or  
665 order issued under this chapter;

666                   (14) A sale or offer to sell securities by or on behalf  
667 of an issuer, if the transaction is part of a single issue in  
668 which:

669                               (A) Not more than ten (10) purchasers are present  
670 in this state during any twelve (12) consecutive months, other  
671 than those designated in paragraph (13);

672                               (B) A general solicitation or general advertising  
673 is not made in connection with the offer to sell or sale of the  
674 securities;

675                               (C) A commission or other remuneration is not paid  
676 or given, directly or indirectly, to a person other than a  
677 broker-dealer registered under this chapter or an agent registered  
678 under this chapter for soliciting a prospective purchaser in this  
679 state; and

680                               (D) The issuer reasonably believes that all the  
681 purchasers in this state, other than those designated in paragraph  
682 (13), are purchasing for investment;

683                   (15) A transaction under an offer to existing security  
684 holders of the issuer, including persons that at the date of the  
685 transaction are holders of convertible securities, options, or  
686 warrants, if a commission or other remuneration, other than a



687 standby commission, is not paid or given, directly or indirectly,  
688 for soliciting a security holder in this state;

689 (16) An offer to sell, but not a sale, of a security  
690 not exempt from registration under the Securities Act of 1933 if:

691 (A) A registration or offering statement or  
692 similar record as required under the Securities Act of 1933 has  
693 been filed, but is not effective, or the offer is made in  
694 compliance with Rule 165 adopted under the Securities Act of 1933  
695 (17 CFR 230.165); and

696 (B) A stop order of which the offeror is aware has  
697 not been issued against the offeror by the administrator or the  
698 Securities and Exchange Commission, and an audit, inspection, or  
699 proceeding that is public and that may culminate in a stop order  
700 is not known by the offeror to be pending;

701 (17) An offer to sell, but not a sale, of a security  
702 exempt from registration under the Securities Act of 1933 if:

703 (A) A registration statement has been filed under  
704 this chapter, but is not effective;

705 (B) A solicitation of interest is provided in a  
706 record to offerees in compliance with a rule adopted by the  
707 administrator under this chapter; and

708 (C) A stop order of which the offeror is aware has  
709 not been issued by the administrator under this chapter and an  
710 audit, inspection, or proceeding that may culminate in a stop  
711 order is not known by the offeror to be pending;

712 (18) A transaction involving the distribution of the  
713 securities of an issuer to the security holders of another person  
714 in connection with a merger, consolidation, exchange of  
715 securities, sale of assets, or other reorganization to which the  
716 issuer, or its parent or subsidiary and the other person, or its  
717 parent or subsidiary, are parties;

718 (19) A rescission offer, sale, or purchase under  
719 Section 75-71-510;



720           (20) An offer or sale of a security to a person not a  
721 resident of this state and not present in this state if the offer  
722 or sale does not constitute a violation of the laws of the state  
723 or foreign jurisdiction in which the offeree or purchaser is  
724 present and is not part of an unlawful plan or scheme to evade  
725 this chapter;

726           (21) Employees' stock purchase, savings, option,  
727 profit-sharing, pension, or similar employees' benefit plan,  
728 including any securities, plan interests, and guarantees issued  
729 under a compensatory benefit plan or compensation contract,  
730 contained in a record, established by the issuer, its parents, its  
731 majority-owned subsidiaries, or the majority-owned subsidiaries of  
732 the issuer's parent for the participation of their employees  
733 including offers or sales of such securities to:

734           (A) Directors; general partners; trustees, if the  
735 issuer is a business trust; officers; consultants; and advisors;

736           (B) Family members who acquire such securities  
737 from those persons through gifts or domestic relations orders;

738           (C) Former employees, directors, general partners,  
739 trustees, if the issuer is a business trust, officers,  
740 consultants, and advisors if those individuals were employed by or  
741 providing services to the issuer when the securities were offered;  
742 and

743           (D) Insurance agents who are exclusive insurance  
744 agents of the issuer, or the issuer's subsidiaries or parents, or  
745 who derive more than fifty percent (50%) of their annual income  
746 from those organizations;

747           (22) A transaction involving:

748           (A) A stock dividend or equivalent equity  
749 distribution, whether the corporation or other business  
750 organization distributing the dividend or equivalent equity  
751 distribution is the issuer or not, if nothing of value is given by  
752 stockholders or other equity holders for the dividend or



equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with Section 75-71-604, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.





**Section 75-71-203. Additional exemptions and waivers.** A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 75-71-201 and 75-71-202.

**Section 75-71-204. Denial, suspension, revocation, condition, or limitation of exemptions.** (a) **Enforcement related powers.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under Section 75-71-201(3)(C), Section 75-71-201(7) or Section 75-71-201 (8) or Section 75-71-202 or an exemption or waiver created under Section 75-71-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 75-71-306 or Section 75-71-604 and only prospectively.

(b) **Knowledge of order required.** A person does not violate Section 75-71-301, Sections 75-71-303 through 75-71-306, Section 75-71-504, or Section 75-71-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

### **ARTICLE 3 - REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES**

**Section 75-71-301. Securities registration requirement.** It is unlawful for a person to offer or sell a security in this state unless:

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under Sections 75-71-201 through 75-71-203; or



819 (3) The security is registered under this chapter.

820 **Section 75-71-302. Notice Filing.** (a) **Required filing of**  
821 **records.** With respect to a federal covered security, as defined  
822 in Section 18(b)(2) of the Securities Act of 1933 (15 USC Section  
823 77r(b)(2)), that is not otherwise exempt under Sections 75-71-201  
824 through 75-71-203, a rule adopted or order issued under this  
825 chapter may require the filing of any or all of the following  
826 records:

827 (1) Before the initial offer of a federal covered  
828 security in this state, all records that are part of a federal  
829 registration statement filed with the Securities and Exchange  
830 Commission under the Securities Act of 1933 and a consent to  
831 service of process complying with Section 75-71-611 signed by the  
832 issuer and the payment of a fee as set forth in Section 75-71-310;  
833 and

834 (2) After the initial offer of the federal covered  
835 security in this state, all records that are part of an amendment  
836 to a federal registration statement filed with the Securities and  
837 Exchange Commission under the Securities Act of 1933.

838 (b) **Notice filing effectiveness and renewal.** A notice  
839 filing under subsection (a) is effective for one (1) year  
840 commencing on the later of the notice filing or the effectiveness  
841 of the offering filed with the Securities and Exchange Commission.  
842 On or before expiration, the issuer may renew a notice filing by  
843 filing a copy of those records filed by the issuer with the  
844 Securities and Exchange Commission that are required by rule or  
845 order under this chapter to be filed and by paying a renewal fee  
846 of the amount set forth at Section 75-71-310. A previously filed  
847 consent to service of process complying with Section 75-71-611 may  
848 be incorporated by reference in a renewal. A renewed notice  
849 filing becomes effective upon the expiration of the filing being  
850 renewed.



(c) **Notice filings for federal covered securities under Section 18(b)(4)(D).** With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 USC Section 77r(b)(4)(D)), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 75-71-611 signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state and the payment of a fee as set forth in Section 75-71-310; and the payment of an additional fee the amount set forth in Section 75-71-310 for any late filing.

(d) **Stop orders.** Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

**Section 75-71-303. Securities registration by coordination.**

(a) **Registration permitted.** A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) **Required records.** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 75-71-305 and a consent to service of process complying with Section 75-71-611:



(1) A copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

**(c) Conditions for effectiveness of registration statement.**

A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or Section 75-71-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 75-71-306; and

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this chapter.

**(d) Notice of federal registration statement effectiveness.**

The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop



order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone, facsimile or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telephone, facsimile or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under Section 75-71-306. The notice by the administrator does not preclude the institution of such a proceeding.

**Section 75-71-304. Securities registration by qualification.**

(a) **Registration permitted.** A security may be registered by qualification under this section.

(b) **Required records.** A registration statement under this section must contain the information or records specified in Section 75-71-305, a consent to service of process complying with Section 75-71-611, and, if required by rule adopted under this chapter, the following information or records:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general



character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;

(3) With respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the



982 person's name and address; the amount of securities of the issuer  
983 held by the person as of the date of the filing of the  
984 registration statement; a description of any material interest of  
985 the person in any material transaction with the issuer or any  
986 significant subsidiary effected within the previous three (3)  
987 years or proposed to be effected; and a statement of the reasons  
988 for making the offering;

989           (7) The capitalization and long term debt, on both a  
990 current and pro forma basis, of the issuer and any significant  
991 subsidiary, including a description of each security outstanding  
992 or being registered or otherwise offered, and a statement of the  
993 amount and kind of consideration, whether in the form of cash,  
994 physical assets, services, patents, goodwill, or anything else of  
995 value, for which the issuer or any subsidiary has issued its  
996 securities within the previous two (2) years or is obligated to  
997 issue its securities;

998           (8) The kind and amount of securities to be offered;  
999 the proposed offering price or the method by which it is to be  
1000 computed; any variation at which a proportion of the offering is  
1001 to be made to a person or class of persons other than the  
1002 underwriters, with a specification of the person or class; the  
1003 basis on which the offering is to be made if otherwise than for  
1004 cash; the estimated aggregate underwriting and selling discounts  
1005 or commissions and finders' fees, including separately cash,  
1006 securities, contracts, or anything else of value to accrue to the  
1007 underwriters or finders in connection with the offering or, if the  
1008 selling discounts or commissions are variable, the basis of  
1009 determining them and their maximum and minimum amounts; the  
1010 estimated amounts of other selling expenses, including legal,  
1011 engineering, and accounting charges; the name and address of each  
1012 underwriter and each recipient of a finder's fee; a copy of any  
1013 underwriting or selling group agreement under which the  
1014 distribution is to be made or the proposed form of any such



1015 agreement whose terms have not yet been determined; and a  
1016 description of the plan of distribution of any securities that are  
1017 to be offered otherwise than through an underwriter;

1018           (9) The estimated monetary proceeds to be received by  
1019 the issuer from the offering; the purposes for which the proceeds  
1020 are to be used by the issuer; the estimated amount to be used for  
1021 each purpose; the order or priority in which the proceeds will be  
1022 used for the purposes stated; the amounts of any funds to be  
1023 raised from other sources to achieve the purposes stated; the  
1024 sources of the funds; and, if a part of the proceeds is to be used  
1025 to acquire property, including goodwill, otherwise than in the  
1026 ordinary course of business, the names and addresses of the  
1027 vendors, the purchase price, the names of any persons that have  
1028 received commissions in connection with the acquisition, and the  
1029 amounts of the commissions and other expenses in connection with  
1030 the acquisition, including the cost of borrowing money to finance  
1031 the acquisition;

1032           (10) A description of any stock options or other  
1033 security options outstanding, or to be created in connection with  
1034 the offering, and the amount of those options held or to be held  
1035 by each person required to be named in paragraph (2), (4), (5),  
1036 (6), or (8) and by any person that holds or will hold ten percent  
1037 (10%) or more in the aggregate of those options;

1038           (11) The dates of, parties to, and general effect  
1039 concisely stated of each managerial or other material contract  
1040 made or to be made otherwise than in the ordinary course of  
1041 business to be performed in whole or in part at or after the  
1042 filing of the registration statement or that was made within the  
1043 previous two (2) years, and a copy of the contract;

1044           (12) A description of any pending litigation, action,  
1045 or proceeding to which the issuer is a party and that materially  
1046 affects its business or assets, and any litigation, action, or  
1047 proceeding known to be contemplated by governmental authorities;





1048           (13) A copy of any prospectus, pamphlet, circular, form  
1049 letter, advertisement, or other sales literature intended as of  
1050 the effective date to be used in connection with the offering and  
1051 any solicitation of interest used in compliance with Section  
1052 75-71-202(17) (B);

1053           (14) A specimen or copy of the security being  
1054 registered, unless the security is uncertificated; a copy of the  
1055 issuer's articles of incorporation and bylaws or their substantial  
1056 equivalents, in effect; and a copy of any indenture or other  
1057 instrument covering the security to be registered;

1058           (15) A signed or conformed copy of an opinion of  
1059 counsel concerning the legality of the security being registered,  
1060 with an English translation if it is in a language other than  
1061 English, which states whether the security when sold will be  
1062 validly issued, fully paid, and nonassessable and, if a debt  
1063 security, a binding obligation of the issuer;

1064           (16) A signed or conformed copy of a consent of any  
1065 accountant, engineer, appraiser, or other person whose profession  
1066 gives authority for a statement made by the person, if the person  
1067 is named as having prepared or certified a report or valuation,  
1068 other than an official record, that is public, which is used in  
1069 connection with the registration statement;

1070           (17) A balance sheet of the issuer as of a date within  
1071 four (4) months before the filing of the registration statement; a  
1072 statement of income and a statement of cash flows for each of the  
1073 three (3) fiscal years preceding the date of the balance sheet and  
1074 for any period between the close of the immediately previous  
1075 fiscal year and the date of the balance sheet, or for the period  
1076 of the issuer's and any predecessor's existence if less than three  
1077 (3) years; and, if any part of the proceeds of the offering is to  
1078 be applied to the purchase of a business, the financial statements  
1079 that would be required if that business were the registrant; and



1080           (18) Any additional information or records required by  
1081 rule adopted or order issued under this chapter.

1082           (c) **Conditions for effectiveness of registration statement.**

1083 A registration statement under this section becomes effective  
1084 thirty (30) days, or any shorter period provided by rule adopted  
1085 or order issued under this chapter, after the date the  
1086 registration statement or the last amendment other than a price  
1087 amendment is filed, if:

1088           (1) A stop order is not in effect and a proceeding is  
1089 not pending under Section 75-71-306;

1090           (2) The administrator has not issued an order under  
1091 Section 75-71-306 delaying effectiveness; or

1092           (3) The applicant or registrant has not requested that  
1093 effectiveness be delayed.

1094           (d) **Delay of effectiveness of registration statement.** The  
1095 administrator may delay effectiveness once for not more than  
1096 ninety (90) days if the administrator determines the registration  
1097 statement is not complete in all material respects and promptly  
1098 notifies the applicant or registrant of that determination by  
1099 telephone, facsimile, or electronic means and promptly confirms  
1100 this notice by a record. The administrator may also delay  
1101 effectiveness for a further period of not more than thirty (30)  
1102 days if the administrator determines that the delay is necessary  
1103 or appropriate and promptly notifies the applicant or registrant  
1104 of that determination by telephone, facsimile, or electronic means  
1105 and promptly confirms this notice by a record.

1106           (e) **Prospectus distribution may be required.** A rule adopted  
1107 or order issued under this chapter may require as a condition of  
1108 registration under this section that a prospectus containing a  
1109 specified part of the information or record specified in  
1110 subsection (b) be sent or given to each person to which an offer  
1111 is made, before or concurrently, with the earliest of:



(1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of a sale made by or for the account of the person;

(3) Payment pursuant to such a sale; or

(4) Delivery of the security pursuant to such a sale.

**Section 75-71-305. Securities registration filings.** (a)

**Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) **Filing fee.** A person filing a registration statement shall pay a filing fee as set forth in Section 75-71-310. This fee shall be nonrefundable except as provided in Section 75-71-310.

(c) **Status of offering.** A registration statement filed under Section 75-71-303 or 75-71-304 must specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) **Incorporation by reference.** A record filed under this chapter or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.



1145           (e) **Nonissuer distribution.** In the case of a nonissuer  
1146 distribution, information or a record may not be required under  
1147 subsection (i) or Section 75-71-304, unless it is known to the  
1148 person filing the registration statement or to the person on whose  
1149 behalf the distribution is to be made or unless it can be  
1150 furnished by those persons without unreasonable effort or expense.

1151           (f) **Escrow and impoundment.** A rule adopted or order issued  
1152 under this chapter may require as a condition of registration that  
1153 a security issued within the previous five (5) years or to be  
1154 issued to a promoter for a consideration substantially less than  
1155 the public offering price or to a person for a consideration other  
1156 than cash be deposited in escrow; and that the proceeds from the  
1157 sale of the registered security in this state be impounded until  
1158 the issuer receives a specified amount from the sale of the  
1159 security either in this state or elsewhere. The conditions of any  
1160 escrow or impoundment required under this subsection may be  
1161 established by rule adopted or order issued under this chapter,  
1162 but the administrator may not reject a depository institution  
1163 solely because of its location in another state.

1164           (g) **Form of subscription.** A rule adopted or order issued  
1165 under this chapter may require as a condition of registration that  
1166 a security registered under this chapter be sold only on a  
1167 specified form of subscription or sale contract and that a signed  
1168 or conformed copy of each contract be filed under this chapter or  
1169 preserved for a period specified by the rule or order, which may  
1170 not be longer than five (5) years.

1171           (h) **Effective period.** Except while a stop order is in  
1172 effect under Section 75-71-306, a registration statement is  
1173 effective for one (1) year after its effective date, or for any  
1174 longer period designated in an order under this chapter during  
1175 which the security is being offered or distributed in a  
1176 nonexempted transaction by or for the account of the issuer or  
1177 other person on whose behalf the offering is being made or by an



1178 underwriter or broker-dealer that is still offering part of an  
1179 unsold allotment or subscription taken as a participant in the  
1180 distribution. For the purposes of a nonissuer transaction, all  
1181 outstanding securities of the same class identified in the  
1182 registration statement as a security registered under this chapter  
1183 are considered to be registered while the registration statement  
1184 is effective. If any securities of the same class are  
1185 outstanding, a registration statement may not be withdrawn until  
1186 one (1) year after its effective date. A registration statement  
1187 may be withdrawn only with the approval of the administrator.

1188       (i) **Periodic reports.** While a registration statement is  
1189 effective, a rule adopted or order issued under this chapter may  
1190 require the person that filed the registration statement to file  
1191 reports, not more often than quarterly, to keep the information or  
1192 other record in the registration statement reasonably current and  
1193 to disclose the progress of the offering.

1194       (j) **Posteffective amendments.** A registration statement may  
1195 be amended after its effective date. The posteffective amendment  
1196 becomes effective when the administrator so orders. If a  
1197 posteffective amendment is made to increase the number of  
1198 securities specified to be offered or sold, the person filing the  
1199 amendment shall pay a registration fee calculated in the manner  
1200 specified in Section 75-71-310, with respect to the additional  
1201 securities proposed to be offered. A posteffective amendment  
1202 relates back to the date of the offering of the additional  
1203 securities being registered if, within one (1) year after the date  
1204 of the sale, the amendment is filed and the additional  
1205 registration fee is paid.

1206       **Section 75-71-306. Denial, suspension, and revocation of**  
1207 **securities registration.** (a) **Stop orders.** The administrator may  
1208 issue a stop order denying effectiveness to, or suspending or  
1209 revoking the effectiveness of, a registration statement if the



1210 administrator finds that the order is in the public interest and  
1211 that:

1212           (1) The registration statement as of its effective date  
1213 or before the effective date in the case of an order denying  
1214 effectiveness, an amendment under Section 75-71-305(j) as of its  
1215 effective date, or a report under Section 75-71-305(i), is  
1216 incomplete in a material respect or contains a statement that, in  
1217 the light of the circumstances under which it was made, was false  
1218 or misleading with respect to a material fact;

1219           (2) This chapter or a rule adopted or order issued  
1220 under this chapter or a condition imposed under this chapter has  
1221 been willfully violated, in connection with the offering, by the  
1222 person filing the registration statement; by the issuer, a  
1223 partner, officer, or director of the issuer or a person having a  
1224 similar status or performing a similar function; a promoter of the  
1225 issuer; or a person directly or indirectly controlling or  
1226 controlled by the issuer; but only if the person filing the  
1227 registration statement is directly or indirectly controlled by or  
1228 acting for the issuer; or by an underwriter;

1229           (3) The security registered or sought to be registered  
1230 is the subject of a permanent or temporary injunction of a court  
1231 of competent jurisdiction or an administrative stop order or  
1232 similar order issued under any federal, foreign, or state law  
1233 other than this chapter applicable to the offering, but the  
1234 administrator may not institute a proceeding against an effective  
1235 registration statement under this subsection (a) more than one (1)  
1236 year after the date of the order or injunction on which it is  
1237 based, and the administrator may not issue an order under this  
1238 subsection (a) on the basis of an order or injunction issued under  
1239 the securities act of another state unless the order or injunction  
1240 was based on conduct that would constitute, as of the date of the  
1241 order, a ground for a stop order under this section;



1242           (4) The issuer's enterprise or method of business  
1243 includes or would include activities that are unlawful where  
1244 performed;

1245           (5) With respect to a security sought to be registered  
1246 under Section 75-71-303, there has been a failure to comply with  
1247 the undertaking required by Section 75-71-303(b) (4);

1248           (6) The applicant or registrant has not paid the filing  
1249 fee, but the administrator shall void the order if the deficiency  
1250 is corrected; or

1251           (7) The offering:

1252                (A) Will work or tend to work a fraud upon  
1253 purchasers or would so operate;

1254                (B) Has been or would be made with unreasonable  
1255 amounts of underwriters' and sellers' discounts, commissions, or  
1256 other compensation, or promoters' profits or participations, or  
1257 unreasonable amounts or kinds of options; or

1258                (C) Is being made on terms that are unfair,  
1259 unjust, or inequitable.

1260           (b) **Enforcement of subsection (a) (7).** To the extent  
1261 practicable, the administrator by rule adopted or order issued  
1262 under this chapter shall publish standards that provide notice of  
1263 conduct that violates subsection (a) (7).

1264           (c) **Institution of stop order.** The administrator may not  
1265 institute a stop order proceeding against an effective  
1266 registration statement on the basis of conduct or a transaction  
1267 known to the administrator when the registration statement became  
1268 effective unless the proceeding is instituted within thirty (30)  
1269 days after the registration statement became effective.

1270           (d) **Summary process.** The administrator may summarily  
1271 revoke, deny, postpone, or suspend the effectiveness of a  
1272 registration statement pending final determination of an  
1273 administrative proceeding. Upon the issuance of the order, the  
1274 administrator, in accordance with Section 75-71-611, shall



1275 promptly notify each person specified in subsection (e) that the  
1276 order has been issued, the reasons for the revocation, denial,  
1277 postponement, or suspension, and that within fifteen (15) days  
1278 after the receipt of a request in a record from the person the  
1279 matter will be scheduled for a hearing. If a hearing is not  
1280 requested and none is ordered by the administrator, within thirty  
1281 (30) days after the date of service of the order, the order  
1282 becomes final. If a hearing is requested or ordered, the  
1283 administrator, after notice of and opportunity for hearing for  
1284 each person subject to the order, may modify or vacate the order  
1285 or extend the order until final determination.

1286 (e) **Procedural requirements for stop order.** A stop order  
1287 may not be issued under this section without:

1288 (1) Appropriate notice, in accordance with Section  
1289 75-71-611, to the applicant or registrant, the issuer, and the  
1290 person on whose behalf the securities are to be or have been  
1291 offered;

1292 (2) An opportunity for hearing; and

1293 (3) Findings of fact and conclusions of law in a record  
1294 in accordance with the administrative hearing procedures set forth  
1295 in the rules.

1296 (f) **Modification or vacation of stop order.** The  
1297 administrator may modify or vacate a stop order issued under this  
1298 section if the administrator finds that the conditions that caused  
1299 its issuance have changed or that it is necessary or appropriate  
1300 in the public interest or for the protection of investors.

1301 **Section 75-71-307. Waiver and modification.** The  
1302 administrator may waive or modify, in whole or in part, any or all  
1303 of the requirements of Sections 75-71-302, 75-71-303, and  
1304 75-71-304(b) or the requirement of any information or record in a  
1305 registration statement or in a periodic report filed pursuant to  
1306 Section 75-71-305(i).





**Section 75-71-310. Filing fees. (a) Required fees for notice filing for federal covered securities under Section 18(b) (2).** The initial filing fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars (\$300.00) and a maximum fee of One Thousand Dollars (\$1,000.00). The renewal fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is one-tenth (1/10) of one percent (1%) of the amount sold in the state with a minimum fee of Three Hundred Dollars (\$300.00) and a maximum fee of One Thousand Dollars (\$1,000.00).

**(b) Required fees for notice filings for federal covered securities under Section 18(b) (4) (D).** The filing fee for a notice filing with respect to a security that is a federal covered security under Section 18(b) (4) (D) of the Securities Act of 1933 (15 USC Section 77r(b) (4) (D)) is Three Hundred Dollars (\$300.00). The fee for a late filing, which is an additional fee, is one percent (1%) of the dollar amount of the offering sold in the state up to a maximum of Five Thousand Dollars (\$5,000.00).

**(c) Required fees for securities registration filings under Section 75-71-305.** (1) The filing fee for a registration statement under Section 75-71-305 is one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars (\$300.00) and a maximum fee of One Thousand Dollars (\$1,000.00).

(2) The filing fee for an amendment to a registration statement under Section 75-71-305 to register additional securities shall be calculated in the manner specified in paragraph (1) with respect to the additional securities proposed to be offered.

#### **ARTICLE 4**



**BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER  
REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

**Section 75-71-401. Broker-dealer registration requirement**

**and exemptions.** (a) **Registration requirement.** It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) The issuer of the securities involved in the transactions;

(B) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) An institutional investor;

(D) A nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:



1372                   (i) The broker-dealer is registered under the  
1373 Securities Exchange Act of 1934 or not required to be registered  
1374 under the Securities Exchange Act of 1934 and is registered under  
1375 the securities laws of the state in which the customer  
1376 relationship was established and where the customer had maintained  
1377 a principal place of residence; and

1378                   (ii) Within forty-five (45) days after the  
1379 customer's first transaction in this state, the person files an  
1380 application for registration as a broker-dealer in this state and  
1381 a further transaction is not effected more than seventy-five (75)  
1382 days after the date on which the application is filed, or, if  
1383 earlier, the date on which the administrator notifies the person  
1384 that the administrator has denied the application for registration  
1385 or has stayed the pendency of the application for good cause;

1386                   (G) Not more than three (3) customers in this  
1387 state during the previous twelve (12) months, in addition to those  
1388 customers specified in subparagraphs (A) through (F) and under  
1389 subparagraph (H), if the broker-dealer is registered under the  
1390 Securities Exchange Act of 1934 or not required to be registered  
1391 under the Securities Exchange Act of 1934 and is registered under  
1392 the securities act of the state in which the broker-dealer has its  
1393 principal place of business; and

1394                   (H) Any other person exempted by rule adopted or  
1395 order issued under this chapter;

1396                   (2) A person that deals solely in United States  
1397 government securities and is supervised as a dealer in government  
1398 securities by the Board of Governors of the Federal Reserve  
1399 System, the Comptroller of the Currency, the Federal Deposit  
1400 Insurance Corporation, or the Office of Thrift Supervision.

1401                   (c) **Limits on employment or association.** It is unlawful for  
1402 a broker-dealer, or for an issuer engaged in offering, offering to  
1403 purchase, purchasing, or selling securities in this state,  
1404 directly or indirectly, to employ or associate with an individual



1405 to engage in an activity related to securities transactions in  
1406 this state if the registration of the individual is suspended or  
1407 revoked or the individual is barred from employment or association  
1408 with a broker-dealer, an issuer, an investment adviser, or a  
1409 federal covered investment adviser by an order of the  
1410 administrator under this chapter, the Securities and Exchange  
1411 Commission, or a self-regulatory organization. A broker-dealer or  
1412 issuer does not violate this subsection if the broker-dealer or  
1413 issuer did not know and in the exercise of reasonable care could  
1414 not have known, of the suspension, revocation, or bar. Upon  
1415 request from a broker-dealer or issuer and for good cause, an  
1416 order under this chapter may modify or waive, in whole or in part,  
1417 the application of the prohibitions of this subsection to the  
1418 broker-dealer.

1419 (d) **Foreign transactions.** A rule adopted or order issued  
1420 under this chapter may permit:

1421 (1) A broker-dealer that is registered in Canada or  
1422 other foreign jurisdiction and that does not have a place of  
1423 business in this state to effect transactions in securities with  
1424 or for, or attempt to effect the purchase or sale of any  
1425 securities by:

1426 (A) An individual from Canada or other foreign  
1427 jurisdiction who is temporarily present in this state and with  
1428 whom the broker-dealer had a bona fide customer relationship  
1429 before the individual entered the United States;

1430 (B) An individual from Canada or other foreign  
1431 jurisdiction who is present in this state and whose transactions  
1432 are in a self-directed tax advantaged retirement plan of which the  
1433 individual is the holder or contributor in that foreign  
1434 jurisdiction; or

1435 (C) An individual who is present in this state,  
1436 with whom the broker-dealer customer relationship arose while the



individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) An agent who represents a broker-dealer that is exempt under this subsection (d) to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph (1).

**Section 75-71-402. Agent registration requirement and exemptions.** (a) **Registration requirement.** It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) **Exemptions from registration.** The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 USC Section 78(h)(2));

(2) An individual who represents a broker-dealer that is exempt under Section 75-71-401(b) or 75-71-401(d);

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 75-71-202, other than Section 75-71-202(11) and (14);

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities



1470 Act of 1933 (15 USC Section 77r(b)(3) or 77r(b)(4)(D)) is not  
1471 exempt if the individual is compensated in connection with the  
1472 agent's participation by the payment of commissions or other  
1473 remuneration based, directly or indirectly, on transactions in  
1474 those securities;

1475 (6) An individual who represents a broker-dealer  
1476 registered in this state under Section 75-71-401(a) or exempt from  
1477 registration under Section 75-71-401(b) in the offer and sale of  
1478 securities for an account of a nonaffiliated federal covered  
1479 investment adviser with investments under management in excess of  
1480 One Hundred Million Dollars (\$100,000,000.00) acting for the  
1481 account of others pursuant to discretionary authority in a signed  
1482 record;

1483 (7) An individual who represents an issuer in  
1484 connection with the purchase of the issuer's own securities;

1485 (8) An individual who represents an issuer and who  
1486 restricts participation to performing clerical or ministerial  
1487 acts; or

1488 (9) Any other individual exempted by rule adopted or  
1489 order issued under this chapter.

1490 (c) **Registration effective only while employed or**  
1491 **associated.** The registration of an agent is effective only while  
1492 the agent is employed by or associated with a broker-dealer  
1493 registered under this chapter or an issuer that is offering,  
1494 selling, or purchasing its securities in this state.

1495 (d) **Limit on employment or association.** It is unlawful for  
1496 a broker-dealer, or an issuer engaged in offering, selling, or  
1497 purchasing securities in this state, to employ or associate with  
1498 an agent who transacts business in this state on behalf of  
1499 broker-dealers or issuers unless the agent is registered under  
1500 subsection (a) or exempt from registration under subsection (b).

1501 (e) **Limit on affiliations.** An individual may not act as an  
1502 agent for more than one (1) broker-dealer or one (1) issuer at a



time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

**Section 75-71-403. Investment adviser registration requirement and exemptions.** (a) **Registration requirement.** It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) Any other client exempted by rule adopted or order issued under this chapter;

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (1); or

(3) Any other person exempted by rule adopted or order issued under this chapter.

(c) **Limits on employment or association.** It is unlawful for an investment adviser, directly or indirectly, to employ or



1536 associate with an individual to engage in an activity related to  
1537 investment advice in this state if the registration of the  
1538 individual is suspended or revoked or the individual is barred  
1539 from employment or association with an investment adviser, federal  
1540 covered investment adviser, or broker-dealer by an order under  
1541 this chapter, the Securities and Exchange Commission, or a  
1542 self-regulatory organization, unless the investment adviser did  
1543 not know, and in the exercise of reasonable care could not have  
1544 known, of the suspension, revocation, or bar. Upon request from  
1545 the investment adviser and for good cause, the administrator, by  
1546 order, may waive, in whole or in part, the application of the  
1547 prohibitions of this subsection to the investment adviser.

1548 (d) **Investment adviser representative registration required.**

1549 It is unlawful for an investment adviser to employ or associate  
1550 with an individual required to be registered under this chapter as  
1551 an investment adviser representative who transacts business in  
1552 this state on behalf of the investment adviser unless the  
1553 individual is registered under Section 75-71-404(a) or is exempt  
1554 from registration under Section 75-71-404(b).

1555 **Section 75-71-404. Investment adviser representative**  
1556 **registration requirement and exemptions. (a) Registration**  
1557 **requirement.** It is unlawful for an individual to transact

1558 business in this state as an investment adviser representative  
1559 unless the individual is registered under this chapter as an  
1560 investment adviser representative or is exempt from registration  
1561 as an investment adviser representative under subsection (b).

1562 (b) **Exemptions from registration.** The following individuals  
1563 are exempt from the registration requirement of subsection (a):

1564 (1) An individual who is employed by or associated with  
1565 an investment adviser that is exempt from registration under  
1566 Section 75-71-403(b) or a federal covered investment adviser that  
1567 is excluded from the notice filing requirements of Section  
1568 75-71-405; and





(2) Any other individual exempted by rule adopted or order issued under this chapter.

(c) **Registration effective only while employed or associated.** The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under Section 75-71-405.

(d) **Limit on affiliations.** An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) **Limits on employment or association.** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) **Referral fees.** An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under Section 75-71-405, or a broker-dealer registered



under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under Section 75-71-405, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

**Section 75-71-405. Federal covered investment adviser notice filing requirement.** (a) **Notice filing requirement.** Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) **Notice filing requirement not required.** The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state; or

(D) Other clients specified by rule adopted or order issued under this chapter;

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that



are resident in this state in addition to those specified under paragraph (1); and

(3) Any other person excluded by rule adopted or order issued under this chapter.

(c) **Notice filing procedure.** A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with Section 75-71-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in Section 75-71-410(e).

(d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon its filing.

**Section 75-71-406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.** (a) **Application for initial registration.** A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 75-71-611, and paying the fee specified in Section 75-71-410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) The information or record required for the filing of a uniform application; and

(2) Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) **Amendment.** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.



1666           (c) **Effectiveness of registration.** If an order is not in  
1667 effect and a proceeding is not pending under Section 75-71-412,  
1668 registration becomes effective at noon on the forty-fifth day  
1669 after a completed application is filed, unless the registration is  
1670 denied. A rule adopted or order issued under this chapter may set  
1671 an earlier effective date or may defer the effective date until  
1672 noon on the forty-fifth day after the filing of any amendment  
1673 completing the application.

1674           (d) **Registration renewal.** A registration is effective until  
1675 midnight on December 31 of the year for which the application for  
1676 registration is filed. Unless an order is in effect under Section  
1677 75-71-412, a registration may be automatically renewed each year  
1678 by filing such records as are required by rule adopted or order  
1679 issued under this chapter, by paying the fee specified in Section  
1680 75-71-410, and by paying costs charged by the designee of the  
1681 administrator for processing the filings.

1682           (e) **Additional conditions or waivers.** A rule adopted or  
1683 order issued under this chapter may impose such other conditions,  
1684 not inconsistent with the National Securities Markets Improvement  
1685 Act of 1996. An order issued under this chapter may waive, in  
1686 whole or in part, specific requirements in connection with  
1687 registration as are in the public interest and for the protection  
1688 of investors.

1689           **Section 75-71-407. Succession and change in registration of**  
1690 **broker-dealer or investment adviser.** (a) **Succession.** A  
1691 broker-dealer or investment adviser may succeed to the current  
1692 registration of another broker-dealer or investment adviser or a  
1693 notice filing of a federal covered investment adviser, and a  
1694 federal covered investment adviser may succeed to the current  
1695 registration of an investment adviser or notice filing of another  
1696 federal covered investment adviser, by filing as a successor an  
1697 application for registration pursuant to Section 75-71-401 or



75-71-403 or a notice pursuant to Section 75-71-405 for the unexpired portion of the current registration or notice filing.

(b) **Organizational change.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) **Name change.** A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) **Change of control.** A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

**Section 75-71-408. Termination of employment or association of agent and investment adviser representative and transfer of**

**employment or association.** (a) **Notice of termination.** If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates



1731 activities that require registration as an agent or investment  
1732 adviser representative, the broker-dealer, issuer, investment  
1733 adviser, or federal covered investment adviser shall promptly file  
1734 a notice of termination. If the registrant learns that the  
1735 broker-dealer, issuer, investment adviser, or federal covered  
1736 investment adviser has not filed the notice, the registrant may do  
1737 so.

1738 (b) **Transfer of employment or association.** If an agent  
1739 registered under this chapter terminates employment by or  
1740 association with a broker-dealer registered under this chapter and  
1741 begins employment by or association with another broker-dealer  
1742 registered under this chapter; or if an investment adviser  
1743 representative registered under this chapter terminates employment  
1744 by or association with an investment adviser registered under this  
1745 chapter; or a federal covered investment adviser that has filed a  
1746 notice under Section 75-71-405 and begins employment by or  
1747 association with another investment adviser registered under this  
1748 chapter or a federal covered investment adviser that has filed a  
1749 notice under Section 75-71-405; then upon the filing by or on  
1750 behalf of the registrant, within thirty (30) days after the  
1751 termination, of an application for registration that complies with  
1752 the requirement of Section 75-71-406(a) and payment of the filing  
1753 fee required under Section 75-71-410, the registration of the  
1754 agent or investment adviser representative is:

1755 (1) Immediately effective as of the date of the  
1756 completed filing, if the agent's Central Registration Depository  
1757 record or successor record or the investment adviser  
1758 representative's Investment Adviser Registration Depository record  
1759 or successor record does not contain a new or amended disciplinary  
1760 disclosure within the previous twelve (12) months; or

1761 (2) Temporarily effective as of the date of the  
1762 completed filing, if the agent's Central Registration Depository  
1763 record or successor record or the investment adviser



representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) **Withdrawal of temporary registration.** The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in Section 75-71-412 and the administrator does so within thirty (30) days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

(d) **Power to prevent registration.** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) **Termination of registration or application for registration.** If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**Section 75-71-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.** Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided



1797 by rule adopted or order issued under this chapter unless a  
1798 revocation or suspension proceeding is pending when the  
1799 application is filed. If a proceeding is pending, withdrawal  
1800 becomes effective when and upon such conditions as required by  
1801 rule adopted or order issued under this chapter. The  
1802 administrator may institute a revocation or suspension proceeding  
1803 under Section 75-71-412 within one (1) year after the withdrawal  
1804 became effective automatically and issue a revocation or  
1805 suspension order as of the last date on which registration was  
1806 effective if a proceeding is not pending.

1807 **Section 75-71-410. Filing fees. (a) Fee established by**  
1808 **administrator.** The administrator shall establish fees by rule  
1809 pursuant to the Mississippi Administrative Procedures Law for:

1810 (1) An initial filing of an application as a  
1811 broker-dealer and renewal of an application by a broker-dealer for  
1812 registration;

1813 (2) An application for registration as an agent and  
1814 renewal of registration as an agent;

1815 (3) An application for registration as an investment  
1816 adviser and renewal of registration as an investment adviser.

1817 (4) An application for registration as an investment  
1818 adviser representative, a renewal of registration as an investment  
1819 adviser representative, and a change of registration as an  
1820 investment adviser representative; and

1821 (5) An initial fee and annual notice fee for a federal  
1822 covered investment adviser required to file a notice under Section  
1823 75-71-405.

1824 (b) **Payment.** A person required to pay a filing or notice  
1825 fee under this section may transmit the fee through or to a  
1826 designee as a rule or order provides under this chapter.

1827 **Section 75-71-411. Postregistration requirements. (a)**  
1828 **Financial requirements.** Subject to Section 15(h) of the  
1829 Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section





1830 222 of the Investment Advisers Act of 1940 (15 USC Section  
1831 80b-22), a rule adopted or order issued under this chapter may  
1832 establish minimum financial requirements for broker-dealers  
1833 registered or required to be registered under this chapter and  
1834 investment advisers registered or required to be registered under  
1835 this chapter.

1836 (b) **Financial reports.** Subject to Section 15(h) of the  
1837 Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section  
1838 222(b) of the Investment Advisers Act of 1940 (15 USC Section  
1839 80b-22), a broker-dealer registered or required to be registered  
1840 under this chapter and an investment adviser registered or  
1841 required to be registered under this chapter shall file such  
1842 financial reports as are required by a rule adopted or order  
1843 issued under this chapter. If the information contained in a  
1844 record filed under this subsection is or becomes inaccurate or  
1845 incomplete in a material respect, the registrant shall promptly  
1846 file a correcting amendment.

1847 (c) **Recordkeeping.** Subject to Section 15(h) of the  
1848 Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section  
1849 222 of the Investment Advisers Act of 1940 (15 USC Section  
1850 80b-22):

1851 (1) A broker-dealer registered or required to be  
1852 registered under this chapter and an investment adviser registered  
1853 or required to be registered under this chapter shall make and  
1854 maintain the accounts, correspondence, memoranda, papers, books,  
1855 and other records required by rule adopted or order issued under  
1856 this chapter;

1857 (2) Broker-dealer records required to be maintained  
1858 under paragraph (1) may be maintained in any form of data storage  
1859 acceptable under Section 17(a) of the Securities Exchange Act of  
1860 1934 (15 USC Section 78q(a)) if they are readily accessible to the  
1861 administrator; and



(3) Investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) **Audits or inspections.** The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) **Custody and discretionary authority bond or insurance.** Subject to the limitations of Section 15(h) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 USC Section 80b-22), the administrator may by rule require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount as prescribed by rule. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under



1895 this chapter. The insurance, bond, or other satisfactory form of  
1896 security must permit an action by a person to enforce any  
1897 liability on the insurance, bond, or other satisfactory form of  
1898 security if instituted within the time limitations in Section  
1899 75-71-509(j)(2).

1900 (f) **Requirements for custody.** Subject to Section 15(h) of  
1901 the Securities Exchange Act of 1934 (15 USC Section 78o(h)) or  
1902 Section 222 of the Investment Advisers Act of 1940 (15 USC Section  
1903 80b-22), an agent may not have custody of funds or securities of a  
1904 customer except under the supervision of a broker-dealer and an  
1905 investment adviser representative may not have custody of funds or  
1906 securities of a client except under the supervision of an  
1907 investment adviser or a federal covered investment adviser. A  
1908 rule adopted or order issued under this chapter may prohibit,  
1909 limit, or impose conditions on a broker-dealer regarding custody  
1910 of funds or securities of a customer and on an investment adviser  
1911 regarding custody of securities or funds of a client.

1912 (g) **Investment adviser brochure rule.** With respect to an  
1913 investment adviser registered or required to be registered under  
1914 this chapter, a rule adopted or order issued under this chapter  
1915 may require that information or other record be furnished or  
1916 disseminated to clients or prospective clients in this state as  
1917 necessary or appropriate in the public interest and for the  
1918 protection of investors and advisory clients.

1919 (h) **Continuing education.** A rule adopted or order issued  
1920 under this chapter may require an individual registered under  
1921 Section 75-71-402 or Section 75-71-404 to participate in a  
1922 continuing education program approved by the Securities and  
1923 Exchange Commission and administered by a self-regulatory  
1924 organization or, in the absence of such a program, a rule adopted  
1925 or order issued under this chapter may require continuing  
1926 education for an individual registered under Section 75-71-404.



1927           **Section 75-71-412. Denial, revocation, suspension,**  
1928 **withdrawal, restriction, condition, or limitation of registration.**

1929   (a) **Disciplinary conditions-applicants.** If the administrator  
1930 finds that the order is in the public interest and subsection (d)  
1931 authorizes the action, an order issued under this chapter may deny  
1932 an application, or may condition or limit registration of an  
1933 applicant to be a broker-dealer, agent, investment adviser, or  
1934 investment adviser representative, and, if the applicant is a  
1935 broker-dealer or investment adviser, of a partner, officer,  
1936 director, or person having a similar status or performing similar  
1937 functions, or a person directly or indirectly in control, of the  
1938 broker-dealer or investment adviser.

1939   (b) **Disciplinary conditions-registrants.** If the  
1940 administrator finds that the order is in the public interest and  
1941 subsection (d) authorizes the action, an order issued under this  
1942 chapter may revoke, suspend, condition, or limit the registration  
1943 of a registrant and, if the registrant is a broker-dealer or  
1944 investment adviser, of a partner, officer, director, or person  
1945 having a similar status or performing similar functions, or a  
1946 person directly or indirectly in control, of the broker-dealer or  
1947 investment adviser. However, the administrator may not:

1948           (1) Institute a revocation or suspension proceeding  
1949 under this subsection (b) based on an order issued under a law of  
1950 another state that is reported to the administrator or a designee  
1951 of the administrator more than one (1) year after the date of the  
1952 order on which it is based; or

1953           (2) Under subsection (d) (5) (A) or (B), issue an order  
1954 on the basis of an order issued under the securities act of  
1955 another state unless the other order was based on conduct for  
1956 which subsection (d) would authorize the action had the conduct  
1957 occurred in this state.

1958   (c) **Disciplinary penalties-registrants.** If the  
1959 administrator finds that the order is in the public interest and



subsection (d) (1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years;

(3) Has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an



1993 aspect of a business involving securities, commodities,  
1994 investments, franchises, insurance, banking, or finance;

1995 (5) Is the subject of an order, issued after notice and  
1996 opportunity for hearing by:

1997 (A) The securities or other financial services  
1998 regulator of a state or the Securities and Exchange Commission or  
1999 other federal agency denying, revoking, barring, or suspending  
2000 registration as a broker-dealer, agent, investment adviser,  
2001 federal covered investment adviser, or investment adviser  
2002 representative;

2003 (B) The securities regulator of a state or the  
2004 Securities and Exchange Commission against a broker-dealer, agent,  
2005 investment adviser, investment adviser representative, or federal  
2006 covered investment adviser;

2007 (C) The Securities and Exchange Commission or a  
2008 self-regulatory organization suspending or expelling the  
2009 registrant from membership in the self-regulatory organization;

2010 (D) A court adjudicating a United States Postal  
2011 Service fraud order;

2012 (E) The insurance regulator of a state denying,  
2013 suspending, or revoking registration as an insurance agent; or

2014 (F) A depository institution or financial services  
2015 regulator suspending or barring the person from the depository  
2016 institution or other financial services business;

2017 (6) Is the subject of an adjudication or determination,  
2018 after notice and opportunity for hearing, by the Securities and  
2019 Exchange Commission, the Commodity Futures Trading Commission; the  
2020 Federal Trade Commission; a federal depository institution  
2021 regulator, or a depository institution, insurance, or other  
2022 financial services regulator of a state that the person willfully  
2023 violated the Securities Act of 1933, the Securities Exchange Act  
2024 of 1934, the Investment Advisers Act of 1940, the Investment  
2025 Company Act of 1940, or the Commodity Exchange Act, the securities



or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this subsection (d) without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 75-71-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 75-71-411(d);

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years;

(10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this subsection (d) when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as



2059 a broker-dealer, agent, investment adviser, investment adviser  
2060 representative, or similar person; or

2061 (C) To have been suspended or expelled from  
2062 membership by or participation in a securities exchange or  
2063 securities association operating under the securities laws of a  
2064 foreign jurisdiction;

2065 (12) Is the subject of a cease and desist order issued  
2066 by the Securities and Exchange Commission or issued under the  
2067 securities, commodities, investment, franchise, banking, finance,  
2068 or insurance laws of a state;

2069 (13) Has engaged in dishonest or unethical practices in  
2070 the securities, commodities, investment, franchise, banking,  
2071 finance, or insurance business within the previous ten (10) years;  
2072 or

2073 (14) Is not qualified on the basis of factors such as  
2074 training, experience, and knowledge of the securities business.  
2075 However, in the case of an application by an agent for a  
2076 broker-dealer that is a member of a self-regulatory organization  
2077 or by an individual for registration as an investment adviser  
2078 representative, a denial order may not be based on this subsection  
2079 if the individual has successfully completed all examinations  
2080 required by subsection (e). The administrator may require an  
2081 applicant for registration under Section 75-71-402 or 75-71-404  
2082 who has not been registered in a state within the two (2) years  
2083 preceding the filing of an application in this state to  
2084 successfully complete an examination.

2085 (e) **Examinations.** A rule adopted or order issued under this  
2086 chapter may require that an examination, including an examination  
2087 developed or approved by an organization of securities regulators,  
2088 be successfully completed by a class of individuals or all  
2089 individuals. An order issued under this chapter may waive, in  
2090 whole or in part, an examination as to an individual and a rule  
2091 adopted under this chapter may waive, in whole or in part, an





2092 examination as to a class of individuals if the administrator  
2093 determines that the examination is not necessary or appropriate in  
2094 the public interest and for the protection of investors.

2095       (f) **Summary process.** The administrator may suspend or deny  
2096 an application summarily; restrict, condition, limit, or suspend a  
2097 registration; or censure, bar, or impose a civil penalty on a  
2098 registrant before final determination of an administrative  
2099 proceeding. Upon the issuance of an order, the administrator  
2100 shall promptly notify each person subject to the order that the  
2101 order has been issued, the reasons for the action, and that within  
2102 fifteen (15) days after the receipt of a request in a record from  
2103 the person the matter will be scheduled for a hearing. If a  
2104 hearing is not requested and none is ordered by the administrator  
2105 within thirty (30) days after the date of service of the order,  
2106 the order becomes final by operation of law. If a hearing is  
2107 requested or ordered, the administrator, after notice of and  
2108 opportunity for hearing to each person subject to the order, may  
2109 modify or vacate the order or extend the order until final  
2110 determination.

2111       (g) **Procedural requirements.** An order issued may not be  
2112 issued under this section, except under subsection (f), without:

2113               (1) Appropriate notice to the applicant or registrant;  
2114               (2) Opportunity for hearing; and  
2115               (3) Findings of fact and conclusions of law in a record  
2116 in accordance with the administrative hearing procedures set forth  
2117 in the rules.

2118       (h) **Control person liability.** A person that controls,  
2119 directly or indirectly, a person not in compliance with this  
2120 section may be disciplined by order of the administrator under  
2121 subsections (a) through (c) to the same extent as the noncomplying  
2122 person, unless the controlling person did not know, and in the  
2123 exercise of reasonable care could not have known, of the existence  
2124 of conduct that is a ground for discipline under this section.



(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

## **ARTICLE 5**

### **FRAUD AND LIABILITIES**

**Section 75-71-501. General fraud.** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**Section 75-71-502. Prohibited conduct in providing investment advice.** (a) **Fraud in providing investment advice.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person; or
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.



(b) **Rules specifying contents of advisory contract.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

**Section 75-71-503. Evidentiary burden.** (a) **Civil.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) **Criminal.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

**Section 75-71-504. Filing of sales and advertising literature.** (a) **Filing requirement.** Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) **Excluded communications.** This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 75-71-201, Section 75-71-202, or Section 75-71-203 except as required pursuant to Section 75-71-201(7).

**Section 75-71-505. Misleading filings.** It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect,



or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**Section 75-71-506. Misrepresentations concerning registration or exemption.** The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

**Section 75-71-507. Qualified immunity.** A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**Section 75-71-508. Criminal penalties. (a) Criminal penalties.** A person that willfully violates this chapter except Section 75-71-504 or the notice filing requirements of Section



2223 75-71-302 or Section 75-71-405, or that willfully violates Section  
2224 75-71-505 knowing the statement made to be false or misleading in  
2225 a material respect, upon conviction, shall be fined not more than  
2226 the amount set forth in Section 75-71-613 or imprisoned not more  
2227 than five (5) years, or both. An individual convicted of  
2228 violating a rule or order under this chapter may be fined, but may  
2229 not be imprisoned, if the individual did not have knowledge of the  
2230 rule or order. Each violation shall be considered as a separate  
2231 offense in a single proceeding or a series of related proceedings.

2232 (b) **Criminal referral not required.** The Attorney General  
2233 with or without a referral from the administrator, may institute  
2234 criminal proceedings under this chapter. The attorneys duly  
2235 employed by the administrator may be appointed by the Attorney  
2236 General or the proper prosecuting attorney or local district  
2237 attorney to act as special prosecutors in criminal proceedings.

2238 (c) **No limitation on other criminal enforcement.** This  
2239 chapter does not limit the power of this state to punish a person  
2240 for conduct that constitutes a crime under other laws of this  
2241 state.

2242 **Section 75-71-509. Civil liability.** (a) **Securities**  
2243 **Litigation Uniform Standards Act.** Enforcement of civil liability  
2244 under this section is subject to the Securities Litigation Uniform  
2245 Standards Act of 1998.

2246 (b) **Liability of seller to purchaser.** A person is liable to  
2247 the purchaser if the person sells a security in violation of  
2248 Section 75-71-301 or, by means of an untrue statement of a  
2249 material fact or an omission to state a material fact necessary in  
2250 order to make the statement made, in light of the circumstances  
2251 under which it is made, not misleading, the purchaser not knowing  
2252 the untruth or omission and the seller not sustaining the burden  
2253 of proof that the seller did not know and, in the exercise of  
2254 reasonable care, could not have known of the untruth or omission.  
2255 An action under this subsection is governed by the following:



2256           (1) The purchaser may maintain an action to recover the  
2257 consideration paid for the security, less the amount of any income  
2258 received on the security, and interest at the legal rate of  
2259 interest from the date of the purchase, costs, and reasonable  
2260 attorney's fees determined by the court, upon the tender of the  
2261 security, or for actual damages as provided in paragraph (3).

2262           (2) The tender referred to in paragraph (1) may be made  
2263 any time before entry of judgment. Tender requires only notice in  
2264 a record of ownership of the security and willingness to exchange  
2265 the security for the amount specified. A purchaser that no longer  
2266 owns the security may recover actual damages as provided in  
2267 paragraph (3).

2268           (3) Actual damages in an action arising under this  
2269 subsection (b) are the amount that would be recoverable upon a  
2270 tender less the value of the security when the purchaser disposed  
2271 of it, and interest at the legal rate of interest from the date of  
2272 the purchase, costs, and reasonable attorney's fees determined by  
2273 the court.

2274           (c) **Liability of purchaser to seller.** A person is liable to  
2275 the seller if the person buys a security by means of an untrue  
2276 statement of a material fact or omission to state a material fact  
2277 necessary in order to make the statement made, in light of the  
2278 circumstances under which it is made, not misleading, the seller  
2279 not knowing of the untruth or omission, and the purchaser not  
2280 sustaining the burden of proof that the purchaser did not know,  
2281 and in the exercise of reasonable care, could not have known of  
2282 the untruth or omission. An action under this subsection is  
2283 governed by the following:

2284           (1) The seller may maintain an action to recover the  
2285 security, and any income received on the security, costs, and  
2286 reasonable attorney's fees determined by the court, upon the  
2287 tender of the purchase price, or for actual damages as provided in  
2288 paragraph (3).



2289           (2) The tender referred to in paragraph (1) may be made  
2290 any time before entry of judgment. Tender requires only notice in  
2291 a record of the present ability to pay the amount tendered and  
2292 willingness to take delivery of the security for the amount  
2293 specified. If the purchaser no longer owns the security, the  
2294 seller may recover actual damages as provided in paragraph (3).

2295           (3) Actual damages in an action arising under this  
2296 subsection (c) are the difference between the price at which the  
2297 security was sold and the value the security would have had at the  
2298 time of the sale in the absence of the purchaser's conduct causing  
2299 liability, and interest at the legal rate of interest from the  
2300 date of the sale of the security, costs and reasonable attorney's  
2301 fees determined by the court.

2302           (d) **Liability of unregistered broker-dealer and agent.** A  
2303 person acting as a broker-dealer or agent that sells or buys a  
2304 security in violation of Section 75-71-401(a), 75-71-402(a), or  
2305 Section 75-71-506 is liable to the customer. The customer, if a  
2306 purchaser, may maintain an action for recovery of actual damages  
2307 as specified in subsection (b)(1) through (3), or, if a seller,  
2308 for a remedy as specified in subsection (c)(1) through (3).

2309           (e) **Liability of unregistered investment adviser and**  
2310 **investment adviser representative.** A person acting as an  
2311 investment adviser or investment adviser representative that  
2312 provides investment advice for compensation in violation of  
2313 Section 75-71-403(a), Section 75-71-404(a), or Section 75-71-506  
2314 is liable to the client. The client may maintain an action to  
2315 recover the consideration paid for the advice, interest at the  
2316 legal rate of interest from the date of payment, costs, and  
2317 reasonable attorney's fees determined by the court.

2318           (f) **Liability for investment advice.** A person that receives  
2319 directly or indirectly any consideration for providing investment  
2320 advice to another person and that employs a device, scheme, or  
2321 artifice to defraud the other person or engages in an act,



2322 practice, or course of business that operates or would operate as  
2323 a fraud or deceit on the other person, is liable to the other  
2324 person. An action under this subsection is governed by the  
2325 following:

2326           (1) The person defrauded may maintain an action to  
2327 recover the consideration paid for the advice and the amount of  
2328 any actual damages caused by the fraudulent conduct, interest at  
2329 the legal rate of interest from the date of the fraudulent  
2330 conduct, costs, and reasonable attorney's fees determined by the  
2331 court, less the amount of any income received as a result of the  
2332 fraudulent conduct.

2333           (2) This subsection (f) does not apply to a  
2334 broker-dealer or its agents if the investment advice provided is  
2335 solely incidental to transacting business as a broker-dealer and  
2336 no special compensation is received for the investment advice.

2337           (g) **Joint and several liability.** The following persons are  
2338 liable jointly and severally with and to the same extent as  
2339 persons liable under subsections (b) through (f):

2340           (1) A person that directly or indirectly controls a  
2341 person liable under subsections (b) through (f), unless the  
2342 controlling person sustains the burden of proof that the person  
2343 did not know, and in the exercise of reasonable care could not  
2344 have known, of the existence of conduct by reason of which the  
2345 liability is alleged to exist;

2346           (2) An individual who is a managing partner, executive  
2347 officer, or director of a person liable under subsections (b)  
2348 through (f), including an individual having a similar status or  
2349 performing similar functions, unless the individual sustains the  
2350 burden of proof that the individual did not know and, in the  
2351 exercise of reasonable care could not have known, of the existence  
2352 of conduct by reason of which the liability is alleged to exist;

2353           (3) An individual who is an employee of or associated  
2354 with a person liable under subsections (b) through (f) and who





2355 materially aids the conduct giving rise to the liability, unless  
2356 the individual sustains the burden of proof that the individual  
2357 did not know and, in the exercise of reasonable care could not  
2358 have known, of the existence of conduct by reason of which the  
2359 liability is alleged to exist; and

2360           (4) A person that is a broker-dealer, agent, investment  
2361 adviser, or investment adviser representative that materially aids  
2362 the conduct giving rise to the liability under subsections (b)  
2363 through (f), unless the person sustains the burden of proof that  
2364 the person did not know and, in the exercise of reasonable care  
2365 could not have known, of the existence of conduct by reason of  
2366 which liability is alleged to exist.

2367           (h) **Right of contribution.** A person liable under this  
2368 section has a right of contribution as in cases of contract  
2369 against any other person liable under this section for the same  
2370 conduct.

2371           (i) **Survival of cause of action.** A cause of action under  
2372 this section survives the death of an individual who might have  
2373 been a plaintiff or defendant.

2374           (j) **Statute of limitations.** A person may not obtain relief:

2375               (1) Under subsection (b) for violation of Section  
2376 75-71-301, or under subsection (d) or (e), unless the action is  
2377 instituted within one (1) year after the violation occurred; or

2378               (2) Under subsection (b), other than for violation of  
2379 Section 75-71-301, or under subsection (c) or (f), unless the  
2380 action is instituted within the earlier of two (2) years after  
2381 discovery of the facts constituting the violation or five (5)  
2382 years after the violation.

2383           (k) **No enforcement of violative contract.** A person that has  
2384 made, or has engaged in the performance of, a contract in  
2385 violation of this chapter or a rule adopted or order issued under  
2386 this chapter, or that has acquired a purported right under the  
2387 contract with knowledge of conduct by reason of which its making



2388 or performance was in violation of this chapter, may not base an  
2389 action on the contract.

2390 (l) **No contractual waiver.** A condition, stipulation, or  
2391 provision binding a person purchasing or selling a security or  
2392 receiving investment advice to waive compliance with this chapter  
2393 or a rule adopted or order issued under this chapter is void.

2394 (m) **Survival of other rights or remedies.** The rights and  
2395 remedies provided by this chapter are in addition to any other  
2396 rights or remedies that may exist, but this chapter does not  
2397 create a cause of action not specified in this section or Section  
2398 75-71-411(e).

2399 **Section 75-71-510. Rescission offers.** A purchaser of a  
2400 security, seller of a security, or recipient of investment advice  
2401 may not maintain an action under Section 75-71-509 if:

2402 (1) The purchaser of a security, seller of a security,  
2403 or recipient of investment advice receives in a record, before the  
2404 action is instituted:

2405 (A) An offer stating the respect in which  
2406 liability under Section 75-71-509 may have arisen and fairly  
2407 advising the purchaser of a security, seller of a security, or  
2408 recipient of investment advice of that person's rights in  
2409 connection with the offer, and any financial or other information  
2410 necessary to correct all material misrepresentations or omissions  
2411 in the information that was required by this chapter to be  
2412 furnished to that person at the time of the purchase of the  
2413 security, sale of the security, or receipt of the investment  
2414 advice;

2415 (B) If the basis for relief under this section may  
2416 have been a violation of Section 75-71-509(b), an offer to  
2417 repurchase the security for cash, payable on delivery of the  
2418 security, equal to the consideration paid, and interest at six  
2419 percent (6%) from the date of the purchase, less the amount of any  
2420 income received on the security, or, if the purchaser no longer



2421 owns the security, an offer to pay the purchaser upon acceptance  
2422 of the offer damages in an amount that would be recoverable upon a  
2423 tender, less the value of the security when the purchaser disposed  
2424 of it, and interest at eight percent (8%) interest from the date  
2425 of the purchase in cash equal to the damages computed in the  
2426 manner provided in this subparagraph;

2427                   (C) If the basis for relief under this section may  
2428 have been a violation of Section 75-71-509(c), an offer to tender  
2429 the security, on payment by the seller of an amount equal to the  
2430 purchase price paid, less income received on the security by the  
2431 purchaser and interest at the legal rate of interest from the date  
2432 of the sale; or if the purchaser no longer owns the security, an  
2433 offer to pay the seller upon acceptance of the offer, in cash,  
2434 damages in the amount of the difference between the price at which  
2435 the security was purchased and the value the security would have  
2436 had at the time of the purchase in the absence of the purchaser's  
2437 conduct that may have caused liability and interest at the legal  
2438 rate of interest from the date of the sale;

2439                   (D) If the basis for relief under this section may  
2440 have been a violation of Section 75-71-509(d); and if the customer  
2441 is a purchaser, an offer to pay as specified in subparagraph (B);  
2442 or, if the customer is a seller, an offer to tender or to pay as  
2443 specified in subparagraph (C);

2444                   (E) If the basis for relief under this section may  
2445 have been a violation of Section 75-71-509(e), an offer to  
2446 reimburse in cash the consideration paid for the advice and  
2447 interest at the legal rate of interest from the date of payment;  
2448 or

2449                   (F) If the basis for relief under this section may  
2450 have been a violation of Section 75-71-509(f), an offer to  
2451 reimburse in cash the consideration paid for the advice, the  
2452 amount of any actual damages that may have been caused by the



2453 conduct, and interest at the legal rate of interest from the date  
2454 of the violation causing the loss;

2455 (2) The offer under paragraph (1) states that it must  
2456 be accepted by the purchaser, seller, or recipient of investment  
2457 advice within thirty (30) days after the date of its receipt by  
2458 the purchaser, seller, or recipient of investment advice or any  
2459 shorter period, of not less than three (3) days, that the  
2460 administrator, by order, specifies;

2461 (3) The offeror has the present ability to pay the  
2462 amount offered or to tender the security under paragraph (1);

2463 (4) The offer under paragraph (1) is delivered to the  
2464 purchaser, seller, or recipient of investment advice, or sent in a  
2465 manner that ensures receipt by the purchaser, seller, or recipient  
2466 of investment advice; and

2467 (5) The purchaser, seller, or recipient of investment  
2468 advice that accepts the offer under paragraph (1) in a record  
2469 within the period specified under paragraph (2) is paid in  
2470 accordance with the terms of the offer.

2471 **ARTICLE 6**

2472 **ADMINISTRATION AND JUDICIAL REVIEW**

2473 **Section 75-71-601. Administration. (a) Administration.**

2474 The administrator shall administer this chapter.

2475 (b) **Unlawful use of records or information.** It is unlawful  
2476 for the administrator or an officer, employee, or designee of the  
2477 administrator to use for personal benefit or the benefit of others  
2478 records or other information obtained by or filed with the  
2479 administrator that are not public under Section 75-71-607(b).  
2480 This chapter does not authorize the administrator or an officer,  
2481 employee, or designee of the administrator to disclose the record  
2482 or information, except in accordance with Section 75-71-602,  
2483 75-71-607(c), or 75-71-608.



2484           (c) **No privilege or exemption created or diminished.** This  
2485 chapter does not create or diminish a privilege or exemption that  
2486 exists at common law, by statute or rule, or otherwise.

2487           (d) **Investor education.** The administrator may develop and  
2488 implement investor education initiatives to inform the public  
2489 about investing in securities, with particular emphasis on the  
2490 prevention and detection of securities fraud. In developing and  
2491 implementing these initiatives, the administrator may collaborate  
2492 with public and nonprofit organizations with an interest in  
2493 investor education. The administrator may accept a grant or  
2494 donation from a person that is not affiliated with the securities  
2495 industry or from a nonprofit organization, regardless of whether  
2496 the organization is affiliated with the securities industry, to  
2497 develop and implement investor education initiatives. This  
2498 subsection does not authorize the administrator to require  
2499 participation or monetary contributions of a registrant in an  
2500 investor education program.

2501           **Section 75-71-602. Investigations and subpoenas.** (a)

2502 **Authority to investigate.** The administrator may:

2503           (1) Conduct public or private investigations within or  
2504 outside of this state which the administrator considers necessary  
2505 or appropriate to determine whether a person has violated, is  
2506 violating, or is about to violate this chapter or a rule adopted  
2507 or order issued under this chapter, or to aid in the enforcement  
2508 of this chapter or in the adoption of rules and forms under this  
2509 chapter;

2510           (2) Require or permit a person to testify, file a  
2511 statement, or produce a record, under oath or otherwise as the  
2512 administrator determines, as to all the facts and circumstances  
2513 concerning a matter to be investigated or about which an action or  
2514 proceeding is to be instituted; and

2515           (3) Publish a record concerning an action, proceeding,  
2516 or an investigation under, or a violation of, this chapter or a



2517 rule adopted or order issued under this chapter if the  
2518 administrator determines it is necessary or appropriate in the  
2519 public interest and for the protection of investors.

2520 (b) **Administrator powers to investigate.** For the purpose of  
2521 an investigation under this chapter, the administrator or its  
2522 designated officer may administer oaths and affirmations, subpoena  
2523 witnesses, seek compulsion of attendance, take evidence, require  
2524 the filing of statements, and require the production of any  
2525 records that the administrator considers relevant or material to  
2526 the investigation.

2527 (c) **Procedure and remedies for noncompliance.** If a person  
2528 does not appear or refuses to testify, file a statement, produce  
2529 records, or otherwise does not obey a subpoena as required by the  
2530 administrator under this chapter, the administrator may apply to  
2531 the Chancery Court of the First Judicial District of Hinds County,  
2532 Mississippi, or a court of another state to enforce compliance.  
2533 The court may:

- 2534 (1) Hold the person in contempt;  
2535 (2) Order the person to appear before the  
2536 administrator;  
2537 (3) Order the person to testify about the matter under  
2538 investigation or in question;  
2539 (4) Order the production of records;  
2540 (5) Grant injunctive relief, including restricting or  
2541 prohibiting the offer or sale of securities or the providing of  
2542 investment advice; and  
2543 (6) Grant any other necessary or appropriate relief.

2544 (d) **Application for relief.** This section does not preclude  
2545 a person from applying to the Chancery Court of the First Judicial  
2546 District of Hinds County, Mississippi, or a court of another state  
2547 for relief from a request to appear, testify, file a statement,  
2548 produce records, or obey a subpoena.



2549           (e) **Use immunity procedure.** An individual is not excused  
2550 from attending, testifying, filing a statement, producing a record  
2551 or other evidence, or obeying a subpoena of the administrator  
2552 under this chapter or in an action or proceeding instituted by the  
2553 administrator under this chapter on the ground that the required  
2554 testimony, statement, record, or other evidence, directly or  
2555 indirectly, may tend to incriminate the individual or subject the  
2556 individual to a criminal fine, penalty, or forfeiture. If the  
2557 individual refuses to testify, file a statement, or produce a  
2558 record or other evidence on the basis of the individual's  
2559 privilege against self-incrimination, the administrator may apply  
2560 to the Chancery Court of the First Judicial District of Hinds  
2561 County, Mississippi, to compel the testimony, the filing of the  
2562 statement, the production of the record, or the giving of other  
2563 evidence. The testimony, record, or other evidence compelled  
2564 under such an order may not be used, directly or indirectly,  
2565 against the individual in a criminal case, except in a prosecution  
2566 for perjury or contempt or otherwise failing to comply with the  
2567 order.

2568           (f) **Assistance to securities regulator of another**  
2569 **jurisdiction.** At the request of the securities regulator of  
2570 another state or a foreign jurisdiction, the administrator may  
2571 provide assistance if the requesting regulator states that it is  
2572 conducting an investigation to determine whether a person has  
2573 violated, is violating, or is about to violate a law or rule of  
2574 the other state or foreign jurisdiction relating to securities  
2575 matters that the requesting regulator administers or enforces.  
2576 The administrator may provide the assistance by using the  
2577 authority to investigate and the powers conferred by this section  
2578 as the administrator determines is necessary or appropriate. The  
2579 assistance may be provided without regard to whether the conduct  
2580 described in the request would also constitute a violation of this  
2581 chapter or other law of this state if occurring in this state. In



2582 deciding whether to provide the assistance, the administrator may  
2583 consider whether the requesting regulator is permitted and has  
2584 agreed to provide assistance reciprocally within its state or  
2585 foreign jurisdiction to the administrator on securities matters  
2586 when requested; whether compliance with the request would violate  
2587 or prejudice the public policy of this state; and the availability  
2588 of resources and employees of the administrator to carry out the  
2589 request for assistance.

2590       **Section 75-71-603. Civil enforcement.** (a) **Civil action**  
2591 **instituted by administrator.** If the administrator believes that a  
2592 person has engaged, is engaging, or is about to engage in an act,  
2593 practice, or course of business constituting a violation of this  
2594 chapter or a rule adopted or order issued under this chapter or  
2595 that a person has, is, or is about to engage in an act, practice,  
2596 or course of business that materially aids a violation of this  
2597 chapter or a rule adopted or order issued under this chapter, the  
2598 administrator may maintain an action in chancery court to enjoin  
2599 the act, practice, or course of business and to enforce compliance  
2600 with this chapter or a rule adopted or order issued under this  
2601 chapter.

2602       (b) **Relief available.** In an action under this section and  
2603 on a proper showing, the court may:

2604               (1) Issue a permanent or temporary injunction,  
2605 restraining order, or declaratory judgment;

2606               (2) Order other appropriate or ancillary relief, which  
2607 may include:

2608                       (A) An asset freeze, accounting, writ of  
2609 attachment, writ of general or specific execution, and appointment  
2610 of a receiver or conservator, that may be the administrator, for  
2611 the defendant or the defendant's assets;

2612                       (B) Ordering the administrator to take charge and  
2613 control of a defendant's property, including investment accounts





2614 and accounts in a depository institution, rents, and profits; to  
2615 collect debts; and to acquire and dispose of property;

2616 (C) Imposing a civil penalty of the amount set  
2617 forth in Section 75-71-613 for each violation; an order of  
2618 rescission, restitution, or disgorgement directed to a person that  
2619 has engaged in an act, practice, or course of business  
2620 constituting a violation of this chapter or the predecessor act or  
2621 a rule adopted or order issued under this chapter or the  
2622 predecessor act; and

2623 (D) Ordering the payment of prejudgment and  
2624 postjudgment interest; or

2625 (3) Order such other relief as the court considers  
2626 appropriate.

2627 (c) **No bond required.** The administrator may not be required  
2628 to post a bond in an action or proceeding under this chapter.

2629 **Section 75-71-604. Administrative enforcement.** (a)

2630 **Issuance of an order or notice.** If the administrator determines  
2631 that a person has engaged, is engaging, or is about to engage in  
2632 an act, practice, or course of business constituting a violation  
2633 of this chapter or a rule adopted or order issued under this  
2634 chapter or that a person has materially aided, is materially  
2635 aiding, or is about to materially aid an act, practice, or course  
2636 of business constituting a violation of this chapter or a rule  
2637 adopted or order issued under this chapter, the administrator may:

2638 (1) Issue an order directing the person to cease and  
2639 desist from engaging in the act, practice, or course of business  
2640 or to take other action necessary or appropriate to comply with  
2641 this chapter;

2642 (2) Issue an order denying, suspending, revoking, or  
2643 conditioning the exemptions for a broker-dealer under Section  
2644 75-71-401(b)(1)(D) or (F) or an investment adviser under Section  
2645 75-71-403(b)(1)(C); or

2646 (3) Issue an order:



2647                   (A) Under Section 75-71-204;

2648                   (B) Imposing a civil penalty in the case of an

2649 issuer of registered securities, broker-dealer, investment

2650 advisor, agent, investment adviser representative, or other person

2651 who violated this chapter;

2652                   (C) Barring or suspending the person from

2653 association with a broker-dealer or investment advisor registered

2654 in this state; or

2655                   (D) Requiring the person to pay restitution for

2656 any loss or disgorge any profits arising from the violation,

2657 including interest.

2658           (b) **Summary process.** An order under subsection (a) is

2659 effective on the date of issuance. Upon issuance of the order,

2660 the administrator shall promptly serve each person subject to the

2661 order with a copy of the order and a notice that the order has

2662 been entered, in accordance with Section 75-71-611. The order

2663 must include a statement of any civil penalty or other

2664 administrative remedy to be imposed under subsection (a) or costs

2665 of investigation the administrator will seek, a statement of the

2666 reasons for the order, and notice that, within fifteen (15) days

2667 after receipt of a request in a record from the person, the matter

2668 will be scheduled for a hearing. If a person subject to the order

2669 does not request a hearing and none is ordered by the

2670 administrator within thirty (30) days after the date of service of

2671 the order, the order, including the imposition of a civil penalty

2672 or other administrative remedy to be imposed under subsection (a)

2673 or requirement for payment of the costs of investigation if a

2674 civil penalty or costs were sought in the statement accompanying

2675 the order, becomes final as to that person by operation of law.

2676 If a hearing is requested or ordered, the administrator, after

2677 notice of and opportunity for hearing to each person subject to

2678 the order, may modify or vacate the order or extend it until final

2679 determination.



2680           (c) **Procedure for final order.** If a hearing is requested or  
2681 ordered pursuant to subsection (b), a hearing must be held  
2682 pursuant to the administrative hearing procedures set forth in the  
2683 rules. A final order may not be issued unless the administrator  
2684 makes findings of fact and conclusions of law in a record in  
2685 accordance with the administrative hearing procedures set forth in  
2686 the rules. The final order may make final, vacate, or modify the  
2687 order issued under subsection (a).

2688           (d) **Civil penalty.** In a final order under subsection (c),  
2689 the administrator may impose a civil penalty in an amount set  
2690 forth in Section 75-71-613 for each violation and each violation  
2691 shall be considered a separate offense in a single proceeding or a  
2692 series of related proceedings.

2693           (e) **Costs.** In a final order, the administrator may charge  
2694 the actual cost of an investigation or proceeding for a violation  
2695 of this chapter or a rule adopted or order issued under this  
2696 chapter.

2697           (f) **Filing of certified final order with court; effect of**  
2698 **filing.** If a petition for judicial review of a final order is not  
2699 filed in accordance with Section 75-71-609, or the petition is  
2700 denied by the court, the administrator may file a certified copy  
2701 of the final order with the clerk of a court in the jurisdiction  
2702 where enforcement will be sought. The order so filed has the same  
2703 effect as a judgment of the court and may be recorded, enforced,  
2704 or satisfied in the same manner as a judgment of the court.

2705           (g) **Enforcement by court; further civil penalty.** If a  
2706 person does not comply with an order under this section, the  
2707 administrator may petition a court of competent jurisdiction to  
2708 enforce the order and collect administrative civil penalties and  
2709 costs imposed under the final order. The court may not require  
2710 the administrator to post a bond in an action or proceeding under  
2711 this section. If the court finds, after service and opportunity  
2712 for hearing, that the person was not in compliance with the order,



2713 the court may adjudge the person in civil contempt of the order.  
2714 The court may impose a further civil penalty against the person  
2715 for contempt in an amount set forth in Section 75-71-613 for each  
2716 violation and may grant any other relief the court determines is  
2717 just and proper in the circumstances.

2718 **Section 75-71-605. Rules, forms, orders, interpretative**  
2719 **opinions, and hearings. (a) Issuance and adoption of forms,**  
2720 **orders, and rules.** The administrator may:

2721 (1) Issue forms and orders and, after notice and  
2722 comment, may adopt and amend rules necessary or appropriate to  
2723 carry out this chapter and may repeal rules, including rules and  
2724 forms governing registration statements, applications, notice  
2725 filings, reports, and other records;

2726 (2) By rule, define terms, whether or not used in this  
2727 chapter, but those definitions may not be inconsistent with this  
2728 chapter; and

2729 (3) By rule, classify securities, persons, and  
2730 transactions and adopt different requirements for different  
2731 classes. Offers to other persons as described in Section  
2732 75-71-202(13)(C) exempted by rule adopted under this chapter or  
2733 order issued under this chapter may be conditioned by rule or  
2734 order and any rule adopted as provided in Section 75-71-203 to  
2735 provide an additional exemption from registration may include  
2736 conditions on such exemption.

2737 (b) **Findings and cooperation.** Under this chapter, a rule or  
2738 form may not be adopted or amended, or an order issued or amended,  
2739 unless the administrator finds that the rule, form, order, or  
2740 amendment is necessary or appropriate in the public interest or  
2741 for the protection of investors and is consistent with the  
2742 purposes intended by this chapter. In adopting, amending, and  
2743 repealing rules and forms, Section 75-71-608 applies in order to  
2744 achieve uniformity among the states and coordination with federal  
2745 laws in the form and content of registration statements,



2746 applications, reports, and other records, including the adoption  
2747 of uniform rules, forms, and procedures.

2748       (c) **Financial statements.** Subject to Section 15(h) of the  
2749 Securities Exchange Act and Section 222 of the Investment Advisers  
2750 Act of 1940, the administrator may require that a financial  
2751 statement filed under this chapter be prepared in accordance with  
2752 generally accepted accounting principles in the United States and  
2753 comply with other requirements specified by rule adopted or order  
2754 issued under this chapter. A rule adopted or order issued under  
2755 this chapter may establish:

2756           (1) Subject to Section 15(h) of the Securities Exchange  
2757 Act and Section 222 of the Investment Advisors Act of 1940, the  
2758 form and content of financial statements required under this  
2759 chapter;

2760           (2) Whether unconsolidated financial statements must be  
2761 filed; and

2762           (3) Whether required financial statements must be  
2763 audited by an independent certified public accountant.

2764       (d) **Interpretative opinions.** The administrator may provide  
2765 interpretative opinions or issue determinations that the  
2766 administrator will not institute a proceeding or an action under  
2767 this chapter against a specified person for engaging in a  
2768 specified act, practice, or course of business if the  
2769 determination is consistent with this chapter. A rule adopted or  
2770 order issued under this chapter may establish a reasonable charge  
2771 for interpretative opinions or determinations that the  
2772 administrator will not institute an action or a proceeding under  
2773 this chapter.

2774       (e) **Effect of compliance.** A penalty under this chapter may  
2775 not be imposed for, and liability does not arise from conduct that  
2776 is engaged in or omitted in good faith believing it conforms to a  
2777 rule, form, or order of the administrator under this chapter.



2778           (f) **Presumption for public hearings.** A hearing in an  
2779 administrative proceeding under this chapter must be conducted in  
2780 public unless the administrator for good cause consistent with  
2781 this chapter determines that the hearing will not be so conducted.

2782           **Section 75-71-606. Administrative files and opinions.** (a)  
2783 **Public register of filings.** The administrator shall maintain, or  
2784 designate a person to maintain, a register of applications for  
2785 registration of securities; registration statements; notice  
2786 filings; applications for registration of broker-dealers, agents,  
2787 investment advisers, and investment adviser representatives;  
2788 notice filings by federal covered investment advisers that are or  
2789 have been effective under this chapter or the predecessor act;  
2790 notices of claims of exemption from registration or notice filing  
2791 requirements contained in a record; orders issued under this  
2792 chapter or the predecessor act; and interpretative opinions or no  
2793 action determinations issued under this chapter.

2794           (b) **Public availability.** The administrator shall make all  
2795 rules, forms, interpretative opinions, and orders available to the  
2796 public.

2797           (c) **Copies of public records.** The administrator shall  
2798 furnish a copy of a record that is a public record or a  
2799 certification that the public record does not exist to a person  
2800 that so requests. A rule adopted under this chapter may establish  
2801 a reasonable charge for furnishing the record or certification. A  
2802 copy of the record certified or a certificate by the administrator  
2803 of a record's nonexistence is prima facie evidence of a record or  
2804 its nonexistence.

2805           **Section 75-71-607. Public records; confidentiality.** (a)  
2806 **Presumption of public records.** Except as otherwise provided in  
2807 subsection (b), records obtained by the administrator or filed  
2808 under this chapter, including a record contained in or filed with  
2809 a registration statement, application, notice filing, or report,



2810 are public records and are available for public examination under  
2811 such rules as the administrator prescribes.

2812 (b) **Nonpublic records.** The following records are not public  
2813 records and are not available for public examination under  
2814 subsection (a):

2815 (1) A record obtained by the administrator in  
2816 connection with an audit or inspection under Section 75-71-411(d)  
2817 or an investigation under Section 75-71-602;

2818 (2) A part of a record filed in connection with a  
2819 registration statement under Section 75-71-301 and Sections  
2820 75-71-303 through 75-71-305 or a record under Section 75-71-411(d)  
2821 that contains trade secrets or confidential information if the  
2822 person filing the registration statement or report has asserted a  
2823 claim of confidentiality or privilege that is authorized by law;

2824 (3) A record that is not required to be provided to the  
2825 administrator or filed under this chapter and is provided to the  
2826 administrator only on the condition that the record will not be  
2827 subject to public examination or disclosure;

2828 (4) A nonpublic record received from a person specified  
2829 in Section 75-71-608(a);

2830 (5) Any social security number, residential address  
2831 unless used as a business address, and residential telephone  
2832 number unless used as a business telephone number, contained in a  
2833 record that is filed; and

2834 (6) A record obtained by the administrator through a  
2835 designee of the administrator that a rule or order under this  
2836 chapter determines has been:

2837 (A) Expunged from the administrator's records by  
2838 the designee; or

2839 (B) Determined to be nonpublic or nondisclosable  
2840 by that designee if the administrator finds the determination to  
2841 be in the public interest and for the protection of investors.



2842           (c) **Administrator discretion to disclose.** If disclosure is  
2843 for the purpose of a civil, administrative, or criminal  
2844 investigation, action, or proceeding or to a person specified in  
2845 Section 75-71-608(a), the administrator may disclose a record  
2846 obtained in connection with an audit or inspection under Section  
2847 75-71-411(d) or a record obtained in connection with an  
2848 investigation under Section 75-71-602.

2849           **Section 75-72-608. Uniformity and cooperation with other**  
2850 **agencies.** (a) **Objective of uniformity.** The administrator may,  
2851 in its discretion, cooperate, coordinate, consult, and, subject to  
2852 Section 75-71-607, share records and information with the  
2853 securities regulator of another state, Canada, a Canadian province  
2854 or territory, a foreign jurisdiction, the Securities and Exchange  
2855 Commission, the United States Department of Justice, the Commodity  
2856 Futures Trading Commission, the Federal Trade Commission, the  
2857 Securities Investor Protection Corporation, a self-regulatory  
2858 organization, a national or international organization of  
2859 securities regulators, a federal or state banking or insurance  
2860 regulator, and a governmental law enforcement or regulatory agency  
2861 to effectuate greater uniformity in securities matters among the  
2862 federal government, self-regulatory organizations, states, and  
2863 foreign governments.

2864           (b) **Policies to consider.** In cooperating, coordinating,  
2865 consulting, and sharing records and information under this section  
2866 and in acting by rule, order, or waiver under this chapter, the  
2867 administrator shall, in its discretion, take into consideration in  
2868 carrying out the public interest the following general policies:

2869                   (1) Maximizing effectiveness of regulation for the  
2870 protection of investors;

2871                   (2) Maximizing uniformity in federal and state  
2872 regulatory standards; and





2873                   (3) Minimizing burdens on the business of capital  
2874 formation, without adversely affecting essentials of investor  
2875 protection.

2876           (c) **Subjects for cooperation.** The cooperation,  
2877 coordination, consultation, and sharing of records and information  
2878 authorized by this section includes:

2879                   (1) Establishing or employing one or more designees as  
2880 a central depository for registration and notice filings under  
2881 this chapter and for records required or allowed to be maintained  
2882 under this chapter;

2883                   (2) Developing and maintaining uniform forms;

2884                   (3) Conducting a joint examination or investigation;

2885                   (4) Holding a joint administrative hearing;

2886                   (5) Instituting and prosecuting a joint civil or  
2887 administrative proceeding;

2888                   (6) Sharing and exchanging personnel;

2889                   (7) Coordinating registrations under Sections 75-71-301  
2890 and 75-71-401 through 75-71-404 and exemptions under Section  
2891 75-71-203;

2892                   (8) Sharing and exchanging records, subject to Section  
2893 75-71-607;

2894                   (9) Formulating rules, statements of policy,  
2895 guidelines, forms, and interpretative opinions and releases;

2896                   (10) Formulating common systems and procedures;

2897                   (11) Notifying the public of proposed rules, forms,  
2898 statements of policy, and guidelines;

2899                   (12) Attending conferences and other meetings among  
2900 securities regulators, which may include representatives of  
2901 governmental and private sector organizations involved in capital  
2902 formation, deemed necessary or appropriate to promote or achieve  
2903 uniformity; and

2904                   (13) Developing and maintaining a uniform exemption  
2905 from registration for small issuers, and taking other steps to



2906 reduce the burden of raising investment capital by small  
2907 businesses.

2908       **Section 75-71-609. Judicial review. (a) Petition for**  
2909 **judicial review of order; venue; scope of review.** Any person  
2910 aggrieved by a final order of the administrator may obtain a  
2911 review of the order in the Chancery Court of the First Judicial  
2912 District of Hinds County, Mississippi, by filing in court, within  
2913 sixty (60) days after the entry of the order, a written petition  
2914 praying that the order be modified or set aside in whole or in  
2915 part. A copy of the petition shall be forthwith served upon the  
2916 administrator and thereupon the administrator shall certify and  
2917 file in court a copy of the filing and evidence upon which the  
2918 order was entered. When these have been filed, the court has  
2919 exclusive jurisdiction to affirm, modify, enforce or set aside the  
2920 order, in whole or in part. The findings of the administrator as  
2921 to the facts, if supported by competent material and substantial  
2922 evidence, are conclusive.

2923       (b) **Adduction of additional evidence.** If either party  
2924 applies to the court for leave to adduce additional material  
2925 evidence, and shows to the satisfaction of the court that there  
2926 were reasonable grounds for failure to adduce the evidence in the  
2927 hearing before the administrator, the court may order the  
2928 additional evidence to be taken before the administrator and to be  
2929 adduced upon the hearing in such manner and upon such conditions  
2930 as the court considers proper. The administrator may modify his  
2931 findings and order by reason of the additional evidence and shall  
2932 file in court the additional evidence together with any modified  
2933 or new findings or order.

2934       (c) **Stay of administrative order under review.** The  
2935 commencement of proceedings under subsection (a) does not, unless  
2936 specifically ordered by the court, operate as a stay of the  
2937 administrator's order.



2938           **Section 75-71-610. Jurisdiction.** (a) **Sales and offers to**  
2939 **sell.** Sections 75-71-301, 75-71-302, 75-71-401(a), 75-71-402(a),  
2940 75-71-403(a), 75-71-404(a), 75-71-501, 75-71-506, 75-71-509, and  
2941 75-71-510 do not apply to a person that sells or offers to sell a  
2942 security unless the offer to sell or the sale is made in this  
2943 state or the offer to purchase or the purchase is made and  
2944 accepted in this state.

2945           (b) **Purchases and offers to purchase.** Sections  
2946 75-71-401(a), 75-71-402(a), 75-71-403(a), 75-71-404(a), 75-71-501,  
2947 75-71-506, 75-71-509, and 75-71-510 do not apply to a person that  
2948 purchases or offers to purchase a security unless the offer to  
2949 purchase or the purchase is made in this state or the offer to  
2950 sell or the sale is made and accepted in this state.

2951           (c) **Offers in this state.** For the purpose of this section,  
2952 an offer to sell or to purchase a security is made in this state,  
2953 whether or not either party is then present in this state, if the  
2954 offer:

- 2955                   (1) Originates from within this state; or  
2956                   (2) Is directed by the offeror to a place in this state  
2957 and received at the place to which it is directed.

2958           (d) **Acceptances in this state.** For the purpose of this  
2959 section, an offer to purchase or to sell is accepted in this  
2960 state, whether or not either party is then present in this state,  
2961 if the acceptance:

- 2962                   (1) Is communicated to the offeror in this state and  
2963 the offeree reasonably believes the offeror to be present in this  
2964 state and the acceptance is received at the place in this state to  
2965 which it is directed; and

- 2966                   (2) Has not previously been communicated to the  
2967 offeror, orally or in a record, outside this state.

2968           (e) **Publications, radio, television, or electronic**  
2969 **communications.** An offer to sell or to purchase is not made in  
2970 this state when a publisher circulates or there is circulated on



2971 the publisher's behalf in this state a bona fide newspaper or  
2972 other publication of general, regular, and paid circulation that  
2973 is not published in this state, or that is published in this state  
2974 but has had more than two-thirds (2/3) of its circulation outside  
2975 this state during the previous twelve (12) months or when a radio  
2976 or television program or other electronic communication  
2977 originating outside this state is received in this state. A radio  
2978 or television program, or other electronic communication is  
2979 considered as having originated in this state if either the  
2980 broadcast studio or the originating source of transmission is  
2981 located in this state, unless:

2982           (1) The program or communication is syndicated and  
2983 distributed from outside this state for redistribution to the  
2984 general public in this state;

2985           (2) The program or communication is supplied by a  
2986 radio, television, or other electronic network with the electronic  
2987 signal originating from outside this state for redistribution to  
2988 the general public in this state;

2989           (3) The program or communication is an electronic  
2990 communication that originates outside this state and is captured  
2991 for redistribution to the general public in this state by a  
2992 community antenna or cable, radio, cable television, or other  
2993 electronic system; or

2994           (4) The program or communication consists of an  
2995 electronic communication that originates in this state, but which  
2996 is not intended for distribution to the general public in this  
2997 state.

2998           (f) **Investment advice and misrepresentations.** Sections  
2999 75-71-403(a), 75-71-404(a), 75-71-405(a), 75-71-502, 75-71-505,  
3000 and 75-71-506 apply to a person if the person engages in an act,  
3001 practice, or course of business instrumental in effecting  
3002 prohibited or actionable conduct in this state, whether or not  
3003 either party is then present in this state.



3004           **Section 75-71-611. Service of process.** (a) **Signed consent**  
3005 **to service of process.** A consent to service of process complying  
3006 with this section required by this chapter must be signed and  
3007 filed in the form required by a rule or order under this chapter.  
3008 A consent appointing the administrator the person's agent for  
3009 service of process in a noncriminal action or proceeding against  
3010 the person, or the person's successor or personal representative  
3011 under this chapter or a rule adopted or order issued under this  
3012 chapter after the consent is filed, has the same force and  
3013 validity as if the service were made personally on the person  
3014 filing the consent. A person that has filed a consent complying  
3015 with this subsection in connection with a previous application for  
3016 registration or notice filing need not file an additional consent.

3017           (b) **Conduct constituting appointment of agent for service.**  
3018 If a person, including a nonresident of this state, engages in an  
3019 act, practice, or course of business prohibited or made actionable  
3020 by this chapter or a rule adopted or order issued under this  
3021 chapter and the person has not filed a consent to service of  
3022 process under subsection (a), the act, practice, or course of  
3023 business constitutes the appointment of the administrator as the  
3024 person's agent for service of process in a noncriminal action or  
3025 proceeding against the person or the person's successor or  
3026 personal representative.

3027           (c) **Procedure for service of process.** Service under  
3028 subsection (a) or (b) may be made by providing a copy of the  
3029 process to the office of the administrator, but it is not  
3030 effective unless:

3031           (1) The plaintiff, which may be the administrator,  
3032 promptly sends notice of the service and a copy of the process,  
3033 return receipt requested, to the defendant or respondent at the  
3034 address set forth in the consent to service of process or, if a  
3035 consent to service of process has not been filed, at the last  
3036 known address, or takes other reasonable steps to give notice; and



(2) The plaintiff files an affidavit of compliance with this subsection (c) in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) **Service in administrative proceedings or civil actions by administrator.** Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) **Opportunity to defend.** If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**Section 75-71-612. Severability clause.** If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**Section 75-71-613. Amounts of civil and criminal penalties.**

(a) **Amount of civil disciplinary penalties imposed - registrants.** The amount of the civil penalty or fine described in Section 75-71-412(c) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation.

(b) **Amount of criminal penalties under Section 75-71-508.** The amount of the criminal penalty or fine described in Section 75-71-508 is not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation.

(c) **Amount of civil penalty under Section 75-71-603 - civil enforcement.** The amount of the civil penalty described in Section 75-71-603(b) (2) (C) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil



penalty may be imposed up to a maximum of Fifteen Thousand Dollars (\$15,000.00) for violations of the chapter committed against elders or disabled persons.

(d) **Amount of civil penalty and further civil penalty under Section 75-71-604 - administrative enforcement.** (1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars (\$15,000.00) for violations of the chapter committed against elders or disabled persons.

(2) The amount of the further civil penalty described in Section 75-71-604(g) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation.

## **ARTICLE 7**

### **TRANSITION**

**Section 75-71-701. Application of chapter to existing proceeding and existing rights and duties.** (a) **Applicability of predecessor act to pending proceedings and existing rights.** The predecessor chapter exclusively governs all actions or proceedings that are pending on January 1, 2010, or may be instituted on the basis of conduct occurring before January 1, 2010, but a civil action may not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after January 1, 2010, whichever is earlier.

(b) **Continued effectiveness under predecessor chapter.** All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor chapter remain in effect while they would have remained in effect if this chapter had not been



enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor chapter.

(c) **Applicability of predecessor chapter to offers or sales.**

The predecessor chapter exclusively applies to an offer or sale made within one (1) year after January 1, 2010, pursuant to an offering made in good faith before January 1, 2010, on the basis of an exemption available under the predecessor chapter.

(d) For the purposes of this chapter, "predecessor chapter" means Chapter 71 of Title 75, Mississippi Code of 1972, as it existed on December 31, 2009.

**SECTION 2.** Sections 75-71-101, 75-71-103, 75-71-105, 75-71-107, 75-71-109, 75-71-111, 75-71-113, 75-71-115, 75-71-117, 75-71-119, 75-71-121, 75-71-123, 75-71-125, 75-71-127, 75-71-201, 75-71-203, 75-71-204, 75-71-205, 75-71-207, 75-71-301, 75-71-303, 75-71-305, 75-71-307, 75-71-309, 75-71-311, 75-71-313, 75-71-315, 75-71-317, 75-71-319, 75-71-321, 75-71-323, 75-71-325, 75-71-327, 75-71-329, 75-71-331, 75-71-333, 75-71-401, 75-71-403, 75-71-405, 75-71-407, 75-71-408, 75-71-409, 75-71-411, 75-71-413, 75-71-415, 75-71-417, 75-71-419, 75-71-421, 75-71-423, 75-71-425, 75-71-427, 75-71-429, 75-71-431, 75-71-501, 75-71-503, 75-71-601, 75-71-603, 75-71-605, 75-71-701, 75-71-703, 75-71-705, 75-71-707, 75-71-709, 75-71-711, 75-71-713, 75-71-715, 75-71-717, 75-71-719, 75-71-721, 75-71-723, 75-71-725, 75-71-727, 75-71-729, 75-71-731, 75-71-733 and 75-71-735, Mississippi Code of 1972, which comprise the Mississippi Securities Act, are repealed.

**SECTION 3.** This act shall take effect and be in force from and after January 1, 2010.

